

CHAPTER 67:16:01
GENERAL PROVISIONS

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67:16:01:03. Eligibility starting date. ~~Eligibility for medical assistance begins on the first day of the month of application if the applicant meets all the requirements for assistance.~~

~~Medical assistance may also begin as early as the first day of the third month prior to the month of application if the individual received medical services during this period and would have been eligible to receive medical assistance had the individual applied at the time the services were received~~ Repealed.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 26 SDR 168, effective July 1, 2000.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

Cross Reference: ~~Long term care residency requirement and beginning of eligibility, § 67:46:03:03.~~

67:16:01:06. Payment of Medicare buy-in premiums. ~~Payment of Medicare buy-in premiums shall be made for individuals who are eligible under the federal Medicare program and are receiving SSI or who are receiving benefits as a qualified Medicare beneficiary~~
Repealed.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 11, effective August 1, 1982; 17 SDR 4, effective July 16, 1990; 37 SDR 53, effective September 23, 2010.

~~General Authority:~~ ~~SDCL 28-6-1.~~

~~Law Implemented:~~ ~~SDCL 28-6-1.~~

~~Cross-Reference:~~ ~~Qualified Medicare beneficiaries (QMB), ch 67:46:11.~~

67:16:11:04.01. Periodicity schedules for complete, comprehensive screenings.

Complete, comprehensive screenings must be completed according to the following schedules:

(1) For preventive pediatric healthcare, follow the recommendations adopted by the American Association ~~Academy~~ of Pediatrics (effective ~~October 1, 2008~~ February 24, 2014) available at ~~<http://practice.aap.org/content.aspx?aid=1599&nodeID=4003>~~

~~<http://www.aap.org/en-us/professional-resources/practice-support/Pages/PeriodicitySchedule.aspx>~~.

(2) For immunizations, follow the recommendations established by the United States Department of Health and Human Services, Center for Disease Control (effective ~~October 1, 2008~~ January 1, 2014) available at ~~<http://www.cdc.gov/vaccines/recs/schedules/default.htm>~~
~~<http://www.cdc.gov/vaccines/schedules/index.html>~~; and

(3) For dental healthcare, a dental screening by a dentist when the child is one year old. After the age of one, the dental screenings follow the schedule established under subdivision (1) of this section.

Vision, dental, and hearing screenings may be conducted as a portion of the physical exam.

When medically necessary, the screening provider must refer the child to an appropriate specialist for a thorough dental, vision, or hearing exam.

Source: 15 SDR 167, effective May 11, 1989; 17 SDR 37, effective September 11, 1990; 18 SDR 209, effective June 23, 1992; 19 SDR 82, effective December 7, 1992; 35 SDR 88, effective October 23, 2008.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:16:29:04.02. Provider to maintain certificate of medical necessity. The provider shall ensure that a certificate of medical necessity as contained in Appendix C at the end of this chapter is completed, signed, and dated ~~within 30 days~~ on or after the date of the prescription. The certificate of medical necessity must be completed before the claim is submitted to the Department. The medical equipment provider must maintain the certificate of medical necessity in the recipient's clinical record. Failure to obtain or maintain a properly completed medical necessity form is cause for nonpayment.

Source: 18 SDR 210, effective June 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:16:35:07. Adjustment/void claims. A provider may have a previously paid claim adjusted or voided by completing and submitting ~~an adjustment/void claim form to the department~~ a new claim to the Department coded as an adjustment or void. ~~The adjustment/void claim form is available from the department.~~ Claim forms may be submitted electronically.

Source: 17 SDR 4, effective July 16, 1990.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

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- 67:46:01:01 Definitions.
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- 67:46:01:03 Eligibility starting date.
- 67:46:01:04 ~~Choosing a provider~~ Repealed.
- 67:46:01:05 ~~Payment of Medicare buy-in premiums~~ Repealed.
- 67:46:01:06 Confidential information.
- 67:46:01:06.01 Release of confidential information.
- 67:46:01:07 Identification card.
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- 67:46:01:23 Residency determinations -- Individuals aged 21 and over residing in long term care facilities -- Capable of indicating intent.
- 67:46:01:24 Residency determinations -- Individuals aged 21 and over residing in long term care facilities -- Incapable of indicating intent before age 21.
- 67:46:01:25 Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Incapable of indicating intent after age 21.
- 67:46:01:26 Residency determinations -- Individuals aged 21 and over not residing in a long term care facility.
- 67:46:01:27 Disputed residency cases.
- 67:46:01:28 Residence determination when individual leaves the state.

67:46:01:01. Definitions. Terms used in this article mean:

- (1) "AFDC," the aid to families with dependent children program as it existed on July 16, 1996, under the provisions of article 67:12;
- (2) "Applicant," an individual who has filed an application for participation in the medical assistance program;
- (3) "Department," the Department of Social Services;
- (4) "Medicaid," the program authorized by Title XIX of the Social Security Act, 42 U.S.C. § 1396d, as amended to July 1, ~~2013~~ 2014, which covers the allowable medical expenses of eligible individuals;
- (5) "Medical assistance," "medical services," or "medical assistance program," the Medicaid program authorized by Title XIX of the Social Security Act, 42 U.S.C. § 1396d, as amended to July 1, ~~2013~~ 2014, and SDCL 28-6, which provides medical assistance to eligible individuals but does not necessarily include long-term care; assistance provided to children who qualify for the nonmedicaid children's health insurance program covered under the provisions of chapter 67:46:14;
- ~~(6) "Prior authorization," the written approval and issuance of an authorization by the department to a provider before certain covered services may be provided;~~
- ~~(7)~~ (6) "Qualified alien," a legal alien who arrived in the United States after August 21, 1996, who meets either the requirements of ~~Pub. L. No. 104-193, § 431(b) (110 Stat. 2274), as amended to July 1, 2013, or the requirements of Pub. L. No. 104-193, § 403(b)(2) (110 Stat. 2265), as amended to July 1, 2013~~ 8 U.S.C. § 1641(b) or 8 U.S.C. § 1613(b)(2), as amended to July 1, 2014;

(7) "Qualified developmental disabilities professional," any person with at least one year of experience working directly with individuals with intellectual disabilities or other developmental disabilities and is either a doctor of medicine or osteopathy, a registered nurse, or a person who holds at least a bachelor's degree in a professional category;

(8) "Recipient," a person who is determined by the department to be eligible for services under this article; and

(9) "SSI," supplemental security income.

Source: Portions of this rule were copied from § 67:16:01:01, effective August 23, 1992; SDR 141, effective March 25, 1993; 20 SDR 92, effective December 21, 1993; 23 SDR 152, effective March 14, 1997; 24 SDR 24, effective August 31, 1997; 26 SDR 168, effective July 1, 2000; 40 SDR 122, effective January 7, 2014.

General Authority: SDCL 28-6-1, 42 U.S.C. § 1396d.

Law Implemented: SDCL 28-6-1, 42 U.S.C. § 1396d.

Cross-References: Definition of “qualified developmental disabilities professional,” SDCL 27B-1-17(14), 42 C.F.R. § 483.430.

67:46:01:02. Eligibility requirements. The following individuals are eligible for medical assistance:

(1) A parent/caretaker relative eligible for Medicaid under the provisions of chapter 67:46:12;

(2) A person who is a recipient of a money payment under the SSI program;

(3) A person under age 21 who would be a recipient of a money payment under the SSI program if not subject to paragraphs (A) and (B) of 42 U.S.C. 1382(c)(7);

(4) A person who is in a hospital or intermediate care facility and would be eligible for a money payment under the SSI program upon leaving the facility;

(5) A person under the age of 21 who is in the custody of the department and who meets the income requirements of § 67:46:12:15;

(6) A person under the age of 21 who meets the income requirements of § 67:46:12:15, is in foster care, and whose financial responsibility has been assumed in full or in part by the department;

(7) A person who is eligible under the provisions of chapters 67:46:02 to 67:46:06, inclusive;

(8) A person who is eligible for transitional medical benefits under the provisions of chapter 67:46:13;

(9) A child in a subsidized adoption;

(10) A person who is currently receiving social security, who was entitled to and received social security and SSI concurrently after April 1977, who was terminated from SSI, and who currently would be eligible for SSI if the social security cost of living allowances back to the time of SSI ineligibility are disregarded;

(11) A pregnant woman who meets the income requirements under the provisions of chapter 67:46:12;

(12) A woman who applied for Medicaid while pregnant and who was eligible for and received Medicaid on the date the pregnancy ended. Eligibility continues to the end of the month 60 days after the pregnancy ends. Coverage is limited to postpartum care and family planning services;

(13) A child under age 19 whose family income meets the income requirements under the provisions of chapter 67:46:12;

(14) A child under age 19, who is eligible for the nonmedicaid children's health insurance program covered under the provisions of chapter 67:46:14;

(15) A pregnant woman whose meets the income requirements as established under the provisions of chapter 67:46:12. Eligibility continues throughout the pregnancy and to the end of the month 60 days after the pregnancy ends without regard to income changes. Services payable are limited to those services that are related to pregnancy, postpartum care, or family planning;

(16) A person determined to be a qualified Medicare beneficiary under the provisions of chapter 67:46:11, with benefits limited to the part A and B premium, deductible, and coinsurance charges;

(17) A person determined to be a Special Low-Income Medicare beneficiary under the provisions of chapter 67:46:11 whose income is at least 100 percent, but less than 120 percent of the federal poverty level, ~~and who is not otherwise eligible for Medicaid.~~ Benefits are limited to payment of part B Medicare premiums;

(18) A person determined to be a qualified Medicare beneficiary under the provisions of chapter 67:46:11 whose income is at least 120 percent, but less than 135 percent of the federal poverty level, and who is not otherwise eligible for Medicaid. Benefits are limited to payment of part B Medicare premiums. The department may discontinue services provided under the provisions of this chapter if the department exhausts its financial resources for providing the services;

(19) A person who is eligible for and is receiving services under the home and community-based services waiver program in chapter 67:44:03 or the home and community-based services program in chapter 67:54:04;

(20) A disabled widow or a disabled widower who is at least age 50 but less than age 65, who was terminated from SSI due to receipt of social security benefits under Title II of the Social Security Act, as amended to July 1, 2014, who is not on Medicare part A, and who would continue to be eligible for SSI if the Title II benefits are disregarded;

(21) A disabled adult who became disabled or blind before age 22 and was terminated from SSI due to entitlement to social security benefits as an adult disabled child, but who would remain SSI-eligible if the social security benefits are disregarded;

(22) A child born to a woman eligible for and receiving Medicaid on the date of the child's birth. Eligibility continues for up to one year as long as the child remains a resident of the state;

(23) A child under age 21 who is under the jurisdiction of the South Dakota Department of Corrections, is not an inmate of a public institution, does not reside with a parent, and meets the income requirements as established under the provisions of chapter 67:46:12;

(24) A child under age 26 who, on the child's eighteenth birthday, was in foster care under the responsibility of the state; and

(25) A woman over age 29 and under age 65 who was screened for breast and cervical cancer by the Department of Health's All Women Count Program and who is in need of treatment for breast or cervical cancer or a precancerous condition of the breast or cervix, ~~in~~ is not covered under creditable coverage, and is not otherwise eligible for medical services.

For purposes of this rule, a qualified alien who arrived in the United States after August 21, 1996, and who meets the eligibility requirements contained in this section must also meet the requirements of § 67:46:01:10.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 4 SDR 35, effective December 22, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 12 SDR 4, effective July 21, 1985; 12 SDR 112, effective January 16, 1986; 13 SDR 193, effective June 22, 1987; 14 SDR 140, effective May 1, 1988; 15 SDR 2, effective July 17, 1988; 15 SDR 171, effective May 15, 1989; 15 SDR 191, effective June 11, 1989; 17 SDR 8, effective July 23, 1990; 17 SDR 53, effective October 16, 1990; 17 SDR 187, effective June 3, 1991; 17 SDR 187, effective June 3, 1991; 17 SDR 200, effective July 1, 1991; transferred from § 67:16:01:02, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 20 SDR 92, effective December 21, 1993; 21 SDR 67, effective October 13, 1994; 21 SDR 162, effective March 23, 1995; 22 SDR 32, effective September 11, 1995; 23 SDR 152, effective March 14, 1997; 24 SDR 24, effective August 31, 1997; 24 SDR 104, effective January 29, 1998; 25 SDR 13, effective August 9, 1998; 26 SDR 168, effective

July 1, 2000; 29 SDR 84, effective November 22, 2002; 30 SDR 193, effective June 13, 2004; 36 SDR 215, effective July 1, 2010, effective July 29, 2014.

General Authority: SDCL 28-6-1(6).

Law Implemented: SDCL 28-6-1(6).

Cross-References:

Federal poverty level, § 67:11:01:03.

Subsidized adoption regulations, ch 67:14:14.

Medicaid entitlement for certain newborns, 42 C.F.R. § 435.117.

Institutionalized individuals, 42 C.F.R. §435.1009.

Definition of "public institution," 42 C.F.R. § 435.1010.

Group care centers for minors, ch 67:42:07.

Residential treatment centers, ch 67:42:08.

State option of Medicaid coverage for adolescents leaving foster care, Pub. L. No. 106-169, § 121, (113 Stat. 1829).

John H. Chafee foster care independence program, Pub. L. No. 106-109, § 477(a)(5), (113 Stat. 1824).

State option of Medicaid coverage for adolescents leaving foster care, 42 U.S.C. § 1396a(a)(10)(A)(ii)(XVII).

State option of Medicaid coverage for certain breast or cervical cancer patients, 42 U.S.C. § 1396a(a)(10)(A)(ii)(XVIII).

Definition of "creditable coverage," 42 U.S.C. § 300gg-3(c).

67:46:01:03. Eligibility starting date. Unless otherwise specified, Eligibility eligibility for medical assistance begins with the first day of the month the department receives the application if the applicant meets all the requirements for assistance. Unless otherwise specified, Medical medical assistance may also begin as early as the first day of the third month immediately before the month the department received the application if the individual received Medicaid services during this period and would have been eligible to receive medical assistance if the individual had applied at the time the services were received.

Source: Copied from § 67:16:01:03, effective August 23, 1992; 25 SDR 13, effective August 9, 1998.

General Authority: SDCL 28-6-1(4)(6).

Law Implemented: SDCL 28-6-1(4)(6).

Cross-Reference: Long-term care residency requirement and beginning of eligibility, § 67:46:03:03.

67:46:01:04. Choosing a provider. ~~An eligible individual is free to choose a provider from among those willing to participate under the medical assistance program~~ Repealed.

Source: Copied from § 67:16:01:04, effective August 23, 1992.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:01:05. Payment of Medicare buy-in premiums. ~~The department shall pay the Medicare buy-in premiums for the following individuals:~~

~~(1) An individual who is eligible under the federal Medicare program and is receiving AFDC, SSI, adult foster care, or assisted living;~~

~~(2) An individual who is receiving benefits as a qualified Medicare beneficiary;~~

~~(3) An individual who is eligible as a special low-income Medicare beneficiary;~~

~~(4) A disabled or blind individual who meets the SSI special status provisions of Pub. L. No. 96-265, § 201 as in effect on January 1, 1993, who was terminated from SSI due to earned income; and~~

~~(5) A person who is currently receiving social security, who was entitled to and received social security and SSI concurrently after April 1977, who was terminated from SSI, and who currently would be eligible for SSI if the social security cost of living allowances back to the time of SSI ineligibility are disregarded~~ Repealed.

Source: Copied from § 67:16:01:06, effective August 23, 1992; 19 SDR 141, effective March 25, 1993.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

Cross-References:

~~Qualified Medicare beneficiary, ch 67:46:11.~~

~~Definition of special low-income Medicare beneficiary, § 67:46:11:01.~~

~~Special status as an SSI recipient for Title XIX, Social Security Act, Title XVI,
§ 1619(b).~~

~~Individuals who become ineligible for cash assistance as a result of OASDI cost of living
increases received after April 1977, 42 C.F.R. § 435.135.~~

67:46:01:11. Application for assistance. Except for those individuals covered under subdivisions 67:46:01:02(2), (3), ~~(7)~~ (8), (12), (22), or ~~(24)~~ (24), an individual desiring medical assistance under this article or someone acting on the individual's behalf, must submit a completed, ~~written~~, and signed application for assistance to the department.

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross Reference: Written application, 42 C.F.R. 435.907 (September 23, 1994).

67:46:01:13. Individual to supply required information. As a condition of eligibility, an individual applying for or receiving assistance under this article must provide the department with the necessary verification to establish initial or continuing eligibility or information necessary for quality control efforts. The individual must also cooperate with the department in establishing the paternity of an applicant or recipient child and in obtaining medical support and medical payments unless the individual establishes good cause for not cooperating. Failure or refusal to cooperate or supply the necessary information results in the denial of an application or the termination of current benefits.

A pregnant woman is exempt from this section with regard to establishing paternity for a child conceived out of wedlock who has yet to be born.

Good cause is established following the provisions of §§ 67:10:01:26 ~~to~~ through ~~67:10:01:32~~ 67:10:01:34, inclusive.

Source: 24 SDR 24, effective August 31, 1997; 34 SDR 322, effective July 1, 2008.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Acceptance of assistance as assignment and subrogation of support rights and insurance proceeds -- Liability of insurer or attorney, SDCL 28-6-7.1.

67:46:01:16. Declaration and documentation of citizenship required. An applicant or recipient must declare his or her citizenship or alien status. An applicant or recipient who declares that he or she is a citizen or national of the United States must present to the department documentary evidence of citizenship or nationality as specified in 42 U.S.C. § 1396b(x), as amended to ~~August 1, 2006~~ July 1, 2014.

Source: 33 SDR 44, effective August 31, 2006.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

~~67:46:03:04~~ 67:46:01:17. State residency determinations -- General provisions. An applicant or recipient must be a resident of the state of South Dakota to be eligible for long-term care assistance. An individual's state of residence shall be determined according to the following:

(1) If the individual has been placed by a state agency into an out-of-state institution, the state arranging or actually making the placement is the individual's state of residence;

(2) If the individual is competent and leaves the facility into which the individual had been placed by a state, that individual's state of residence is the state in which the individual is physically located;

(3) If a placement is initiated by a state because that state lacks a sufficient number of appropriate facilities to provide services to its residents, the state making the placement is the individual's state of residence;

(4) If the individual is receiving a state supplementary payment, the state making the supplementary payment is the individual's state of residence;

(5) If the individual is receiving federal payments for foster care and adoption assistance under Title IV-E of the Social Security Act, the state making the payment is the individual's state of residence;

~~(6) If the two states involved have an interstate agreement, the individual's state of residence shall be determined according to the interstate agreement.~~

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 10 SDR 39, effective November 1, 1983; 11 SDR 86,

effective December 30, 1984; transferred from § 67:16:18:04, effective August 23, 1992;
transferred from § 67:46:03:04.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Incapability of indicating intent, § ~~67:46:03:07~~ 67:46:01:20.

~~67:46:03:05~~ **67:46:01:18**. **Residency -- Placement by states in an out-of-state long-term care facility.** If a state arranges for an individual to be placed in a long-term care facility located in another state, the state making the placement is the individual's state of residence, regardless of the individual's intent or ability to indicate intent.

If an individual capable of indicating intent leaves the facility into which the individual has been placed by a state, the individual's state of residence is the state where the individual is physically located.

Any action beyond providing information to the individual and the individual's family constitutes arranging or making a state placement. Providing basic information about facilities available in another state or assisting an individual to locate an institution in another state, provided the individual is capable of indicating intent and independently decides to move, is not considered state placement.

Source: 8 SDR 170, effective June 21, 1982; 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.01, effective August 23, 1992; transferred from § 67:46:03:05.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Placement by a State in an out-of-State institution, 42 C.F.R. § 435.403(e) (July 12, 2006).

~~67:46:03:06~~ 67:46:01:19. No specified period of residence required. The department shall not deny long-term care assistance to an eligible individual in a long-term care facility who has not resided in South Dakota for a specified period or who did not establish residence in South Dakota before entering the long-term care facility.

Source: 8 SDR 170, effective June 21, 1982; transferred from § 67:16:18:04.02, effective August 23, 1992; transferred from § 67:46:03:06.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

~~67:46:03:07~~ **67:46:01:20**. **Incapability of indicating intent.** The department shall consider an individual incapable of indicating intent if the individual meets one of the following:

- (1) The individual has been judged legally incompetent by a court;
- (2) A physician, psychologist, or a qualified developmental disability professional has found the individual to be incapable of indicating intent and has based this finding on medical evidence; or
- (3) A psychologist has determined that the individual has an IQ of 49 or less or a mental age of 7 or less and has based this determination on tests appropriate for the individual being tested.

Source: 10 SDR 39, effective November 1, 1983; transferred from § 67:16:18:04.03, effective August 23, 1992; 40 SDR 122, effective January 8, 2014; transferred from § 67:46:03:07.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: State residence -- Individual considered incapable of indicating intent, 42 C.F.R. § 435.403(c) (July 12, 2006); ~~Definition of qualified developmental disability professional, 42 C.F.R. § 442.401.~~

~~67:46:03:08~~ 67:46:01:21. Residency determinations -- Individuals under age 21 residing in long-term care facilities. The state of residence for an individual under age 21 who is residing in a long-term care facility shall be determined according to the following:

(1) If the individual is emancipated from the individual's parents or if the individual is married and capable of indicating intent, the state where the individual is living with the intention to remain permanently or for an indefinite period is the individual's state of residence;

(2) If the individual is neither married nor emancipated, the state of residence may be determined by one of the following:

(a) The state of residence is that of the parent's state of residence at the time of placement;

(b) The state of residence is that of the parent who filed the application provided the individual is institutionalized in the parent's state of residence;

(c) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian's state of residence at the time of placement; or

(d) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian who files the application provided the individual is institutionalized in the guardian's state of residence.

(3) If the individual has been abandoned by the individual's parents and does not have a legal guardian, the individual's state of residence is the state of residence of the person filing the application.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.04, effective August 23, 1992; transferred from § 67:46:03:08.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: State residence -- Individuals under age 21, 42 C.F.R. § 435.403(h)
(July 12, 2006).

~~67:46:03:09~~ 67:46:01:22. Residency determinations -- Individuals under age 21 not residing in a long-term care facility. The state of residence for individuals under age 21 who are not residing in a long-term care facility is one of the following:

(1) For an individual who is emancipated from the individual's parents or married and who is capable of indicating intent, the state of residence is the state where the individual is living and

(a) Intends to reside, including without a fixed address; or

(b) Has entered the state with a job commitment or seeking employment, whether or not currently employed.

(2) For any other individual, the state of residence is:

(a) The state where the individual resides, including without a fixed address; or

(b) The state of residency of the parent or caretaker, with whom the individual resides, and where the parent or caretaker is living and

(i) Intends to reside, including without a fixed address; or

(ii) Has entered the State with a job commitment or seeking employment, whether or not currently employed.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.05, effective August 23, 1992, effective July 29, 2014; transferred from § 67:46:03:09.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Assistance applications and eligibility, chapter 67:12:01; State residence, 42 C.F.R. 435.403(h) (July 12, 2006).

~~67:46:03:10~~ 67:46:01:23. Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Capable of indicating intent. For a long-term care applicant or recipient aged 21 or over capable of indicating intent, the state of residence is the state where the individual is living with the intention to remain there permanently or for an indefinite period.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.06, effective August 23, 1992; transferred from § 67:46:03:10.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: State residence -- Individuals age 21 and over, 42 C.F.R. § 435.403(i) (July 12, 2006).

~~67:46:03:11~~ 67:46:01:24. Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Incapable of indicating intent before age 21. For a long-term care individual aged 21 or over who became incapable of indicating intent before age 21, the state of residence is one of the following:

(1) If the individual is neither married nor emancipated, the state of residence may be determined by one of the following:

(a) The state of residence is that of the parent's state of residence at the time of placement;

(b) The state of residence is that of the parent who files the application provided the individual is institutionalized in the parent's state of residence;

(c) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian's state of residence at the time of placement; or

(d) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian who files the application provided the individual is institutionalized in the guardian's state of residence;

(2) That of the person filing the application if the individual has been abandoned by the individual's parent, does not have a legal guardian, and is residing in long-term care in that state.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.07, effective August 23, 1992; transferred from § 67:46:03:11.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: State residence -- Individuals ~~under~~ age 21 and over, 42 C.F.R.
§ 435.403(h i) (July 12, 2006).

~~67:46:03:12~~ 67:46:01:25. Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Incapable of indicating intent after age 21. For a long-term care applicant or recipient who became incapable of indicating intent after age 20, the state of residence is the state in which the individual is physically present unless another state makes the placement.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.08, effective August 23, 1992; transferred from § 67:46:03:12.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Residency -- Placement by states in an out-of-state long-term care facility, § ~~67:46:03:05~~ 67:46:01:18 ; State residence -- Individuals age 21 and over, 42 C.F.R. § 435.403(i) (July 12, 2006).

~~67:46:03:13~~ 67:46:01:26. Residency determinations -- Individuals aged 21 and over not residing in a long-term care facility. The state of residence for individuals aged 21 and over who are not residing in a long-term care facility is one of the following:

(1) The state where the individual is living and

(a) intends to reside, including without a fixed address; or

(b) has entered the state with a job commitment or seeking employment, whether or not currently employed.

(2) The state where the individual is living if the individual is incapable of stating intent for residency.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.09, effective August 23, 1992, effective July 29, 2014; transferred from § 67:46:03:13.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: State residence, 42 C.F.R. 435.403(i) (July 12, 2006).

~~67:46:03:14~~ 67:46:01:27. Disputed residency cases. If two states dispute an individual's state of residence and the dispute cannot be resolved according to §§ ~~67:46:03:04~~ 67:46:01:17 to ~~67:46:03:13~~ 67:46:01:26, inclusive, the state where the individual is physically located is the state of residence.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.10, effective August 23, 1992; transferred from § 67:46:03:14.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

~~67:46:03:15~~ 67:46:01:28. Residence determination when individual leaves the state.

The South Dakota residency requirement for an applicant or recipient of long-term care assistance, in case of temporary leave from the state, shall be determined according to the following guidelines:

(1) An individual who leaves the state by choice without a declared intent to return is not considered a resident of this state for the purpose of determining eligibility for long-term care assistance;

(2) Assistance from South Dakota shall be terminated when a recipient meets the residence requirements for long-term care assistance in another state;

(3) When an individual lives in another state and declares an intention to make that state the individual's home, the department shall request the individual to contact the other state agency and apply for long-term care assistance. When the individual declares an intention to make another state the individual's home, long-term care assistance from South Dakota shall be discontinued; and

(4) An individual who receives any form of long-term care assistance from another state is not entitled to long-term care assistance from South Dakota in any month such assistance is received from the other state whether or not the individual is physically present in South Dakota.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 10 SDR 39, effective November 1, 1983; transferred from § 67:16:18:05, effective August 23, 1992; transferred from § 67:46:03:15.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Incapability of indicating intent, § ~~67:46:03:07~~ 67:46:01:20.

67:46:02:01. Definitions. Terms used in this chapter mean:

(1) "Long-term care," continuing 24-hour service in a medical, nursing, or intermediate care facility, assisted living facility, or adult foster home; participation in the home and community-based service programs under chapters 67:44:03 and 67:54:04; and

(2) "Application," the action by which an individual ~~indicates in writing to the department the desire to receive assistance by completing~~ completes the department's application form for long-term care assistance or medical assistance. An application is not an inquiry, which is simply a request for information about eligibility requirements for long-term care assistance or medical assistance. An inquiry may be followed by ~~a written~~ an application.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 10 SDR 79, effective February 1, 1984; transferred from § 67:16:17:01, effective August 23, 1992; 20 SDR 92, effective December 21, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:02:06. Case record to contain facts. If the applicant voluntarily withdraws an application, the ~~caseworker~~ department shall send a notice to the applicant to confirm the withdrawal and shall enter the action in the case record. If the applicant dies or cannot be located, the ~~caseworker~~ department shall file the application without action and enter a notation in the case record. In all other cases, the applicant's or recipient's case record shall contain supportive facts for each decision relating to approval or denial of eligibility.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:17:06, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:02:08. Review of continuing eligibility. The department shall redetermine continuing eligibility for long-term care and medical assistance at least once every 12 months.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:17:09, effective August 23, 1992; 20 SDR 92, effective December 21, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: ~~42 U.S.C. § 1381 thru 1383, 1972~~ Periodic redeterminations of Medicaid eligibility, 42 C.F.R. 435.916 (March 23, 2012).

CHAPTER 67:46:03

LONG-TERM CARE ELIGIBILITY

Section

- 67:46:03:01 Responsibility for information.
- 67:46:03:02 Aged, blind, or disabled.
- 67:46:03:03 Long-term care residency requirement and beginning of eligibility.
- 67:46:03:04 ~~State residency determinations—General provisions~~ Transferred.
- 67:46:03:05 ~~Residency—Placement by states in an out of state long term care facility~~
Transferred.
- 67:46:03:06 ~~No specified period of residence required~~ Transferred.
- 67:46:03:07 ~~Incapability of indicating intent~~ Transferred.
- 67:46:03:08 ~~Residency determinations—Individuals under age 21 residing in long term~~
~~care facilities~~ Transferred.
- 67:46:03:09 ~~Residency determinations—Individuals under age 21 not residing in a long~~
~~term care facility~~ Transferred.
- 67:46:03:10 ~~Residency determinations—Individuals aged 21 and over residing in long~~
~~term care facilities—Capable of indicating intent~~ Transferred.
- 67:46:03:11 ~~Residency determinations—Individuals aged 21 and over residing in long~~
~~term care facilities—Incapable of indicating intent before age 21~~
Transferred.
- 67:46:03:12 ~~Residency determinations—Individuals aged 21 and over residing in long~~
~~term care facilities—Incapable of indicating intent after age 21~~
Transferred.

- 67:46:03:13 ~~Residency determinations — Individuals aged 21 and over not residing in a long term care facility~~ Transferred.
- 67:46:03:14 ~~Disputed residency cases~~ Transferred.
- 67:46:03:15 ~~Residence determination when individual leaves the state~~ Transferred.
- 67:46:03:16 and 67:46:03:17 Repealed.
- 67:46:03:18 Determination of disability.
- 67:46:03:19 Determination of blindness.
- 67:46:03:20 Cessation of determination of blindness.
- 67:46:03:21 Cessation of disability.
- 67:46:03:22 Release of medical information.
- 67:46:03:23 Payment for examinations.
- 67:46:03:24 ~~Absence of regulations regarding conditions of eligibility~~ Repealed.

~~67:46:03:04. State residency determinations — General provisions. An applicant or recipient must be a resident of the state of South Dakota to be eligible for long term care assistance. An individual's state of residence shall be determined according to the following:~~

~~(1) If the individual has been placed by a state agency into an out-of-state institution, the state arranging or actually making the placement is the individual's state of residence;~~

~~(2) If the individual is competent and leaves the facility into which the individual had been placed by a state, that individual's state of residence is the state in which the individual is physically located;~~

~~(3) If a placement is initiated by a state because that state lacks a sufficient number of appropriate facilities to provide services to its residents, the state making the placement is the individual's state of residence;~~

~~(4) If the individual is receiving a state supplementary payment, the state making the supplementary payment is the individual's state of residence;~~

~~(5) If the individual is receiving federal payments for foster care and adoption assistance under Title IV-E of the Social Security Act, the state making the payment is the individual's state of residence;~~

~~(6) If the two states involved have an interstate agreement, the individual's state of residence shall be determined according to the interstate agreement. Transferred to § 67:46:01:17.~~

~~**Source:** 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 10 SDR 39, effective November 1, 1983; 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04, effective August 23, 1992.~~

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

Cross-Reference: ~~Incapacity of indicating intent, § 67:46:03:07.~~

67:46:03:05. Residency -- ~~Placement by states in an out-of-state long-term care facility.~~

~~If a state arranges for an individual to be placed in a long-term care facility located in another state, the state making the placement is the individual's state of residence, regardless of the individual's intent or ability to indicate intent.~~

~~If an individual capable of indicating intent leaves the facility into which the individual has been placed by a state, the individual's state of residence is the state where the individual is physically located.~~

~~Any action beyond providing information to the individual and the individual's family constitutes arranging or making a state placement. Providing basic information about facilities available in another state or assisting an individual to locate an institution in another state, provided the individual is capable of indicating intent and independently decides to move, is not considered state placement. Transferred to § 67:46:01:18.~~

~~**Source:** 8 SDR 170, effective June 21, 1982; 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.01, effective August 23, 1992.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

67:46:03:06. No specified period of residence required. ~~The department shall not deny long term care assistance to an eligible individual in a long term care facility who has not resided in South Dakota for a specified period or who did not establish residence in South Dakota before entering the long term care facility.~~ Transferred to § 67:46:01:19.

Source: ~~8 SDR 170, effective June 21, 1982; transferred from § 67:16:18:04.02, effective August 23, 1992.~~

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:03:07. Incapability of indicating intent. ~~The department shall consider an individual incapable of indicating intent if the individual meets one of the following:~~

- ~~(1) The individual has been judged legally incompetent by a court;~~
- ~~(2) A physician, psychologist, or a qualified developmental disability professional has found the individual to be incapable of indicating intent and has based this finding on medical evidence; or~~
- ~~(3) A psychologist has determined that the individual has an IQ of 49 or less or a mental age of 7 or less and has based this determination on tests appropriate for the individual being tested.~~

Source: ~~10 SDR 39, effective November 1, 1983; transferred from § 67:16:18:04.03, effective August 23, 1992; 40 SDR 122, effective January 8, 2014. Transferred to § 67:46:01:20.~~

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

Cross-References: ~~State residence — Individual considered incapable of indicating intent, 42 C.F.R. § 435.403; Definition of qualified developmental disability professional, 42 C.F.R. § 442.401.~~

67:46:03:08. Residency determinations --~~Individuals under age 21 residing in long-term care facilities.~~ The state of residence for an individual under age 21 who is residing in a long-term care facility shall be determined according to the following:

~~(1) If the individual is emancipated from the individual's parents or if the individual is married and capable of indicating intent, the state where the individual is living with the intention to remain permanently or for an indefinite period is the individual's state of residence;~~

~~(2) If the individual is neither married nor emancipated, the state of residence may be determined by one of the following:~~

~~(a) The state of residence is that of the parent's state of residence at the time of placement;~~

~~(b) The state of residence is that of the parent who filed the application provided the individual is institutionalized in the parent's state of residence;~~

~~(c) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian's state of residence at the time of placement; or~~

~~(d) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian who files the application provided the individual is institutionalized in the guardian's state of residence.~~

~~(3) If the individual has been abandoned by the individual's parents and does not have a legal guardian, the individual's state of residence is the state of residence of the person filing the application. Transferred to § 67:46:01:21.~~

Source: ~~11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.04, effective August 23, 1992.~~

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

Cross-Reference: ~~State residence — Individuals under age 21, 42 C.F.R. § 435.403(h).~~

67:46:03:09. Residency determinations -- Individuals under age 21 not residing in a long-term care facility. The state of residence for individuals under age 21 who are not residing in a long-term care facility is one of the following:

(1) For an individual who is emancipated from the individual's parents or married and who is capable of indicating intent, the state of residence is the state where the individual is living and

(a) Intends to reside, including without a fixed address; or

(b) Has entered the state with a job commitment or seeking employment, whether or not currently employed.

(2) For any other individual, the state of residence is

(a) The state where the individual resides, including without a fixed address; or

(b) The state of residency of the parent or caretaker, with whom the individual resides, and where the parent or caretaker is living and

(i) Intends to reside, including without a fixed address; or

(ii) Has entered the State with a job commitment or seeking employment, whether or not currently employed. Transferred to § 67:46:01:22.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.05, effective August 23, 1992, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: ~~Assistance applications and eligibility, chapter 67:12:01; State residence, 42 C.F.R. 435.403 (July 12, 2006).~~

~~67:46:03:10. Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Capable of indicating intent.~~ For a long-term care applicant or recipient aged 21 or over capable of indicating intent, the state of residence is the state where the individual is living with the intention to remain there permanently or for an indefinite period. Transferred to § 67:46:01:23.

~~Source:~~ 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.06, effective August 23, 1992.

~~General Authority:~~ SDCL 28-6-1.

~~Law Implemented:~~ SDCL 28-6-1.

67:46:03:11. Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Incapable of indicating intent before age 21. For a long term care individual aged 21 or over who became incapable of indicating intent before age 21, the state of residence is one of the following:

(1) If the individual is neither married nor emancipated, the state of residence may be determined by one of the following:

(a) The state of residence is that of the parent's state of residence at the time of placement;

(b) The state of residence is that of the parent who files the application provided the individual is institutionalized in the parent's state of residence;

(c) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian's state of residence at the time of placement; or

(d) If parental rights have been terminated and a legal guardian has been appointed, the state of residence is that of the guardian who files the application provided the individual is institutionalized in the guardian's state of residence;

(2) That of the person filing the application if the individual has been abandoned by the individual's parent, does not have a legal guardian, and is residing in long-term care in that state. Transferred to § 67:46:01:24.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.07, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

~~**Cross-Reference:** State residence—Individuals under age 21, 42 C.F.R. § 435.403(h).~~

~~67:46:03:12. Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Incapable of indicating intent after age 21.~~ For a long term care applicant or recipient who became incapable of indicating intent after age 20, the state of residence is the state in which the individual is physically present unless another state makes the placement. Transferred to § 67:46:01:25.

~~Source:~~ 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.08, effective August 23, 1992.

~~General Authority:~~ SDCL 28-6-1.

~~Law Implemented:~~ SDCL 28-6-1.

~~Cross-Reference:~~ Residency -- Placement by states in an out-of-state long-term care facility, § 67:46:03:05.

67:46:03:13. Residency determinations -- Individuals aged 21 and over not residing in a long-term care facility. ~~The state of residence for individuals aged 21 and over who are not residing in a long-term care facility is one of the following:~~

~~(1) The state where the individual is living and~~

~~(a) intends to reside, including without a fixed address; or~~

~~(b) has entered the state with a job commitment or seeking employment,~~

~~whether or not currently employed.~~

~~(2) The state where the individual is living if the individual is incapable of stating intent for residency. Transferred to § 67:46:01:26.~~

Source: ~~11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.09, effective August 23, 1992.~~

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:03:14. Disputed residency cases. ~~If two states dispute an individual's state of residence and the dispute cannot be resolved according to §§ 67:46:03:04 to 67:46:03:13, inclusive, the state where the individual is physically located is the state of residence.~~
Transferred to § 67:46:01:27.

Source: ~~11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.10, effective August 23, 1992.~~

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:03:15. Residence determination when individual leaves the state. ~~The South Dakota residency requirement for an applicant or recipient of long term care assistance, in case of temporary leave from the state, shall be determined according to the following guidelines:~~

~~(1) An individual who leaves the state by choice without a declared intent to return is not considered a resident of this state for the purpose of determining eligibility for long term care assistance;~~

~~(2) Assistance from South Dakota shall be terminated when a recipient meets the residence requirements for long term care assistance in another state;~~

~~(3) When an individual lives in another state and declares an intention to make that state the individual's home, the department shall request the individual to contact the other state agency and apply for long term care assistance. When the individual declares an intention to make another state the individual's home, long term care assistance from South Dakota shall be discontinued; and~~

~~(4) An individual who receives any form of long term care assistance from another state is not entitled to long term care assistance from South Dakota in any month such assistance is received from the other state whether or not the individual is physically present in South Dakota. Transferred to § 67:46:01:28.~~

Source: ~~2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 10 SDR 39, effective November 1, 1983; transferred from § 67:16:18:05, effective August 23, 1992.~~

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

Cross-Reference: Incapability of indicating intent, § 67:46:03:07.

67:46:03:18. Determination of disability. The disability/incapacity consultation team shall determine disability following the guidelines for the SSI program provided in 42 U.S.C. §§ 1382c(a)(3)(A) to 1382c(a)(3)(C), inclusive, as of ~~January 1, 1995~~ July 1, 2014, based on medical evidence supplemented by a social history. Medical evidence may be a physician's report, a copy of the physician's records, or the findings of a physical examination completed for this purpose. An individual who is receiving social security or SSI disability benefits meets the long-term care assistance disability requirements.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 18 SDR 67, effective October 13, 1991; transferred from § 67:16:18:08, effective August 23, 1992; 21 SDR 162, effective March 23, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:03:24. Absence of regulations regarding conditions of eligibility. ~~In the absence of specific regulations on income and resource requirements for long term care assistance not otherwise defined in chapters 67:16:01 to 67:16:16, inclusive, eligibility decisions shall be based on the SSI requirements in 42 U.S.C. §§ 1382 to 1383, inclusive, as amended, December 1, 1980~~ Repealed.

Source: 8 SDR 170, effective June 21, 1982; transferred from § 67:16:18:15, effective August 23, 1992.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

CHAPTER 67:46:04

LONG-TERM CARE INCOME REQUIREMENTS

Section

- 67:46:04:01 Scope of chapter.
- 67:46:04:02 Definitions.
- 67:46:04:03 Items not considered income when determining eligibility for long-term care or medical assistance.
- 67:46:04:04 Income from other benefit programs -- Overpayments.
- 67:46:04:05 ~~Determining monthly gross income~~ Repealed.
- 67:46:04:06 Income considered in month received.
- 67:46:04:07 Repealed.
- 67:46:04:08 Income before application.
- 67:46:04:09 ~~Verification of income~~ Repealed.
- 67:46:04:10 Income considered.
- 67:46:04:11 and 67:46:04:12 Repealed.
- 67:46:04:13 Department to refer certain individuals to Social Security Administration to apply for SSI.
- 67:46:04:14 Ineligibility when income exceeds 300 percent of maximum SSI standard.
- 67:46:04:15 Ineligibility when income exceeds monthly care rates for assisted living or adult foster care.
- 67:46:04:16 Income from trust.
- 67:46:04:17 ~~Income from real property held in trust by the federal government~~ Repealed.
- 67:46:04:18 Assets held in common with another person.

67:46:04:19 Assets disposed of to establish eligibility -- Ineligibility for services.

67:46:04:20 Absence of an income regulation.

67:46:04:05. Determining monthly gross income. ~~To determine the monthly gross income of an applicant or recipient of long term care assistance, the department shall multiply weekly gross income by four and one third, biweekly gross income by two and one sixth, or semimonthly gross income by two~~ Repealed.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:19:02, effective August 23, 1992.

~~General Authority:~~ ~~SDCL 28-6-1.~~

~~Law Implemented:~~ ~~SDCL 28-6-1.~~

67:46:04:09. Verification of income. ~~All income shall be verified by the department and documented in the case record~~ Repealed.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; transferred from § 67:16:19:06, effective August 23, 1992.

~~General Authority:~~ ~~SDCL 28-6-1.~~

~~Law Implemented:~~ ~~SDCL 28-6-1.~~

67:46:04:14. Ineligibility when income exceeds 300 percent of maximum SSI standard. An individual who is in a medical or ~~long-term-care~~ nursing facility or is participating in a home and community-based waiver program is ineligible to receive assistance under this article when the individual's monthly income exceeds 300 percent of the maximum SSI standard benefit amount.

Source: Transferred from § 67:46:04:13, 20 SDR 92, effective December 21, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Long-term care residency requirements and beginning of eligibility, § 67:46:03:03; SSI standard benefit amount, § 67:46:04:13, Medicaid income trust, § 67:46:05:33.01.

67:46:04:15. Ineligibility when income exceeds monthly care rates for assisted living or adult foster care. An individual not receiving home and community based waiver services and who is in an assisted living facility or in adult foster care is ineligible to receive assistance under this article when the individual's net income exceeds the monthly care rates after application of the budgeting regulations contained in §§ 67:46:06:03 to 67:46:06:07, inclusive.

Source: Transferred from § 67:46:04:13, 20 SDR 92, effective December 21, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Long-term care residency requirements and beginning of eligibility, § 67:46:03:03.

67:46:04:17. Income from real property held in trust by the federal government.

~~Effective January 1, 1994, when determining eligibility for long term care or medical assistance, the department shall exclude up to \$2,000 a year of lease income received by an Indian from real property held in trust by the federal government~~ Repealed.

Source: 20 SDR 144, effective March 10, 1994.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:04:20. Absence of an income regulation. In the absence of specific regulations or income requirements for long-term care assistance not otherwise defined in this article, decisions shall be based on the current SSI regulations as provided in 42 U.S.C. § § 1382 and 1383, as amended to July 1, 2014.

Source:

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:46:05

LONG-TERM CARE RESOURCE REQUIREMENTS

Section

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67:46:05:01. Definitions. Terms used in this chapter mean:

(1) "Assets," the income and resources of an individual and the individual's spouse, including any income or resource which the individual or the individual's spouse is entitled to receive but does not because of some action or inaction on the part of any of the individuals listed in § 67:46:05:32.01;

(2) "Contiguous property," all land adjacent to the home including land separated only by roads, rivers, streams, and similar features and not separated by intervening property owned by another person;

~~(3) "Dependent relative," a son, daughter, granddaughter, grandson, stepson, stepdaughter, in laws, mother, father, stepmother, stepfather, half sister, half brother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister who is not currently receiving SSI and for whom a dependent deduction could be taken on an income tax return;~~

~~(4)~~ (3) "Equity" or "equity value," the fair market value of property less any encumbrances. Future interest owed as a result of the debt is not considered in establishing equity value;

~~(5)~~ (4) "Fair market value," the amount for which the property can be expected to sell on the open market in the geographic area involved under existing economic conditions;

~~(6)~~ (5) "Home property," a shelter which the individual owns and which is used as the individual's principal place of residence, including the buildings and contiguous property;

~~(7)~~ (6) "Liquid resources," assets which are in cash or payable in cash on demand or financial instruments which can be converted into cash within 20 workdays. Liquid resources

include cash on hand, savings or checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, contracts for deed, and similar properties;

~~(8)~~ (7) "Nonliquid resources," all resources other than liquid resources and excluded resources. Nonliquid resources include real, personal, or business property such as inventories, livestock, implements, vehicles, stored grain, and similar properties;

~~(9)~~ (8) "Other real property," real property other than that having the characteristics of home property or real property held in trust;

~~(10)~~ (9) "Real property," real property as defined in SDCL 43-1-3;

~~(11)~~ (10) "Real property held in trust," real property to which the federal government has the legal title but which is being held for the benefit of citizens;

~~(12)~~ (11) "Transfer," any action or inaction taken by an individual or the individual's spouse or someone acting on behalf of or at the request of the individual or the individual's spouse which results in loss of possession, ownership of a lesser share, or less control or access by an individual of any interest in income or real or personal property, including items such as a gift, a disclaimer of inheritance, or an assignment; or any action that results in reducing the amounts which an individual might otherwise claim from any source, including items such as a decedent's estate, a trust or similar legal device, or an obligation from someone required by law to furnish support;

~~(13)~~ (12) "Trust" or "Similar legal device," any arrangement, instrument, or device, such as an annuity, escrow account, pension fund, or investment account, in which another entity controls an individual's funds and has a duty to that individual to follow the instructions of the arrangement, instrument, or device; and

~~(14)~~ (13) "Vested right" or "life estate interest," the immediate fixed right of possession or future enjoyment of property by an individual or individuals.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 5 SDR 109, effective July 1, 1979; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:01, effective August 23, 1992; 21 SDR 162, effective March 23, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Real and personal property distinguished, SDCL 43-1-3.

Homestead limited to house or mobile home and appurtenant buildings -- Business place -- Minimum size of mobile home, SDCL 43-31-2.

Homestead containing one or more lots or tracts of land -- Contiguous tracts -- Use in good faith, SDCL 43-31-3.

Limited area of homestead -- Mineral lands, SDCL 43-31-4.

67:46:05:04. Determining fair market value. The fair market value of property or contractual rights to receive money must be determined by one of the following:

(1) A real estate appraiser;

(2) A Bureau of Indian Affairs realty office;

(3) An average of three estimates from individuals, other than the applicant or recipient, who are familiar with property values within the geographic area;

(4) A Farm Home Administration office;

(5) A bank or savings and loan official;

(6) An agency that specializes in discounting contractual rights using amortization schedules, current property values, or other pertinent data; or

(7) One hundred percent of the county tax valuation unless:

a. The county tax valuation notice is more than a year old based on its date of issue; or

b. The county tax valuation notice pertains to a special purpose assessment, unless it also provides a fair market value assessment, which can be used; or

c. The county tax valuation assessment is under appeal; or

d. The county tax valuation assessment is based on something other than fair market value, such as agricultural, mining or industrial; or

e. The county tax valuation notice provides either no assessment ratio or only a range.

The applicant or recipient must provide documentation to the department which establishes the property's or contract's fair market value. The department reserves the right to obtain and use independent fair market valuations when, in its judgment, the valuations submitted are too high or too low.

The initial value of a life estate is determined according to § 67:46:05:08.

The initial value of contractual rights to receive installment payments for property that was sold is determined according to § 67:46:05:28.

Source: 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:01.03, effective August 23, 1992; 21 SDR 162, effective March 23, 1995; 25 SDR 13, effective August 9, 1998.

General Authority: SDCL 28-6-1(4)(6), 28-6-3.1.

Law Implemented: SDCL 28-6-1(4)(6), 28-6-3.1.

67:46:05:06.01. Disposal of assets -- Look-back periods. The department shall use the following look-back periods when determining whether an asset was transferred for less than fair market value:

~~(1) If the asset was transferred before February 8, 2006, and does not meet the criteria in subdivision (3) of this section, the look-back period extends back to the date 36 months before the first date on which the individual is institutionalized and applies for long-term care assistance;~~

~~(2)~~ (1) If the asset was transferred after February 7, 2006, the The look-back period extends back to the date 60 months before the first date on which the individual is institutionalized and applies for long-term care assistance; and

~~(3)~~ (2) If the asset was transferred to a trust or similar legal device, the look-back period extends back to the date 60 months before the first date the individual is institutionalized and applies for long-term care assistance.

Source: 33 SDR 44, effective August 31, 2006.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Look-back period, 42 U.S.C. § 1396p(c)(1)(B)(i).

67:46:05:07. Return of transferred resource. If the asset which was transferred according to § 67:46:05:06 is returned to the individual and the individual notifies the department as required by § 67:46:02:09 and provides the department with verification of the return, ~~the individual may reapply and~~ all eligibility conditions, including the resource limit, will be reevaluated.

Source: 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; transferred from § 67:16:20:02.02, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:05:09.02. Ineligibility if assets transferred. If an asset is disposed of for the purpose of establishing Medicaid eligibility and the asset was disposed of for less than fair market value within the look-back periods established in § 67:46:05:06.01, the period of ineligibility is determined under the provisions of § 67:46:05:09.

The department shall apportion the number of months of ineligibility equally between the individual receiving ~~long-term-care~~ home and community based or nursing facility services and the individual's spouse who is applying for ~~long-term-care~~ home and community based or nursing facility services if the following conditions exist:

(1) Both the individual and the individual's spouse are ~~in long-term-care~~ residing in a nursing facility or receiving home and community based waiver services or if one spouse is in a nursing facility and the other is receiving home and community based waiver services;

(2) The department had previously determined that the individual ~~receiving long-term care services~~ residing in a nursing facility or receiving home and community based waiver services was ineligible because of a transfer and the individual is currently serving out a period of ineligibility; and

(3) The spouse would otherwise be eligible for ~~long-term-care~~ nursing facility or home and community based waiver services except for the period of ineligibility.

If more than one transfer occurs, the periods of ineligibility are consecutive. If a period of ineligibility is in effect and a transfer occurs, the period of ineligibility for the additional transfer is added to the period of ineligibility already in effect.

~~If the transfer occurred before February 8, 2006, the period of ineligibility begins with the first day of the month in which the transfer occurred, the first day of the month in which~~

~~payment to the individual is foreclosed, or the day after a prior period of ineligibility has ended, whichever is later.~~

If the individual is an applicant ~~and the transfer occurred after February 7, 2006~~, the period of ineligibility begins the date the applicant is eligible for ~~long-term care assistance nursing facility or home and community based waiver services~~ but for the period of ineligibility or the date after a prior period of ineligibility has ended, whichever is later. If the individual is a recipient ~~and the transfer occurred after February 7, 2006~~, the period of ineligibility begins with the first day of the month after the transfer occurred or the date after a prior period of ineligibility has ended, whichever is later.

Source: 21 SDR 162, effective March 23, 1995; 30 SDR 193, effective June 13, 2004; 31 SDR 107, effective February 1, 2005; 33 SDR 44, effective August 31, 2006.

General Authority: SDCL 28-6-1, 28-6-3.1.

Law Implemented: SDCL 28-6-3.1.

Cross-References:

Disposal of resources for purposes of establishing eligibility, § 67:46:05:06.

Lengthening look-back period for all disposals to five years, 42 U.S.C. § 1396p(c)(1)(B)(i).

Authority for states to accumulate multiple transfers into one penalty period, 42 U.S.C. § 1396p(c)(1)(H).

67:46:05:09.03. Assets disposed of to establish eligibility -- Ineligibility for services.

If an applicant or recipient who is Medicaid eligible solely because of home and community-based services, ~~assisted living, or adult foster care~~ disposes of assets to establish Medicaid eligibility, the individual is ineligible for all medical services provided under article 67:16.

If an individual receiving ~~long-term care~~ services in a nursing facility disposes of assets to establish Medicaid eligibility, the individual is ineligible for ~~long-term care~~ nursing facility services until the transfer penalty period has expired. If the individual would otherwise be eligible for Medicaid, except for the transfer penalty, the individual is eligible for medical services but ineligible for ~~long-term care~~ nursing facility services.

Source: 21 SDR 162, effective March 23, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Calculating period of ineligibility, § 67:46:05:09.

67:46:05:10. Period of ineligibility waived under certain circumstances. The department may waive the period of ineligibility specified in §§ 67:46:05:09 and 67:46:05:15 if:

(1) ~~the~~ The individual or someone acting on the individual's behalf provides clear and convincing evidence that the individual has no other means of support and denial of ~~long-term care~~ nursing facility or home and community based waiver services assistance would deprive the individual of food, clothing, shelter, or other necessities of life or medical care, the absence of which would endanger the individual's health or life; and

(2) ~~Before waiving the period of ineligibility, the~~ The individual or someone acting on the individual's behalf either demands the return of the asset that was transferred or receives the fair market value for the asset; and

(3) ~~If this fails~~ the asset is not returned upon demand or fair market value is not received, the individual or someone acting on the individual's behalf must either:

(a) ~~retain~~ Retain an attorney who must initiate a civil action for the recovery of the asset or its fair market value; or,

(b) ~~if~~ If the transfer was the result of a crime of theft or exploitation, the individual or someone acting on the individual's behalf must report the incident to a local law enforcement agency.

The ~~long-term care~~ home and community based waiver provider or the nursing facility in which the individual is residing may file a waiver application on behalf of the individual if the waiver application is done with the consent of the individual or the individual's personal representative.

An individual may appeal a denial of a waiver request under the provisions of chapter 67:17:02. The burden of proof is with the individual and there must be clear and convincing evidence that justifies the waiver.

Source: 16 SDR 10, effective July 23, 1989; 16 SDR 203, effective May 27, 1990; 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:02.05, effective August 23, 1992; 33 SDR 44, effective August 31, 2006; 35 SDR 166, effective December 24, 2008.

General Authority: SDCL 28-6-1, 28-6-3.1.

Law Implemented: SDCL 28-6-3.1, Pub. L. No. 100-360 (102 Stat. 761).

Cross-References:

Disposal of resources for purposes of establishing eligibility, § 67:46:05:06.

Notice of right to request waiver of period of ineligibility -- Right to request waiver --
Assets transferred at less than fair market value, § 67:46:08:05.

Availability of hardship waivers, 42 U.S.C. § 1396p(c)(2)(D).

Facility may file for waiver on behalf of institutionalized individual, 42 U.S.C. § 1396p(c)(2)(D).

67:46:05:12. Compensation for resource. ~~Compensation for a resource must be established in a legally enforceable agreement entered into before the resource is transferred.~~
The compensation for a resource includes all money, real or personal property, food, shelter, or services received by the individual or eligible spouse at or after the time of transfer in exchange for the resource only if the compensation was provided pursuant to a binding and legally enforceable agreement in effect at the time of the transfer. Compensation also includes all money, real or personal property, food, shelter, or services received prior to the actual transfer if they were provided pursuant to a written, binding and legally enforceable agreement in effect at the time the compensation for the resource is provided whereby the eligible individual would transfer the resource or otherwise pay for such items.

Source: 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:02.07, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:05:13. Availability of income and resources. ~~An individual applying for or receiving long term care services or medical assistance must take advantage of all income and resources to which the individual is entitled, including items such as social security, SSI, unemployment compensation, income and resources available under the terms of a trust, veterans' benefits, insurance policies, and contractual agreements. Failure or refusal by the individual to take the necessary action to take advantage of the income and resources makes the individual ineligible for long term care services and medical assistance~~ Repealed.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:03, effective August 23, 1992.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

~~67:46:05:14. Classification of real property.~~ Real property shall be classified as home property, real property held in trust, or other real property Repealed.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:20:04, effective August 23, 1992.

~~General Authority:~~ ~~SDCL 28-6-1.~~

~~Law Implemented:~~ ~~SDCL 28-6-1.~~

67:46:05:15. Home property exclusion. If an individual's eligibility for long-term care assistance is based on an application that was received by the department before January 1, 2006, the individual's home property is excluded from assets if it continues to be the individual's principal place of residence or continues to be occupied by and the primary residence of the individual's spouse, ~~or dependent relative~~ child, stepchild, grandchild, parent, stepparent, grandparent, aunt, uncle, niece, nephew, brother, sister, stepbrother, stepsister, half brother, half sister, cousin or in-law who is dependent on the applicant or recipient.

The value of the individual's ownership interest in a jointly owned home is an excluded resource for as long as sale of the property would cause undue hardship, due to loss of housing, to a co-owner. In order for undue hardship to be met the individual must provide clear and convincing evidence that the co-owner uses the property as their principal place of residence; would have to move if the property were sold; and has no other readily available housing.

If an individual's eligibility for long-term care assistance is based on an application that was received by the department after December 31, ~~2005~~ 2013, the individual's home property interest up to an equity value of ~~\$500,000~~ 543,000 is excluded from the individual's assets if it continues to be the individual's principal place of residence. Beginning with calendar year ~~2014~~ 2015 and each succeeding year, the department shall increase the amount by the percentage increase in the consumer price index for all urban consumers, rounded to the nearest \$1,000.

If the equity interest in the home is greater than the amount specified, the individual is ineligible for long-term care medical assistance regardless of whether or not the individual will be returning to the home to live.

The equity limit contained in this section does not apply if the individual's spouse or child, who is either under age 21 or is blind or permanently and totally disabled, is lawfully residing in the home.

Nothing in this rule prevents the individual from using a reverse mortgage or home equity loan to reduce the total equity interest in the home.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 5 SDR 109, effective July 1, 1979; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:20:05, effective August 23, 1992; 33 SDR 44, effective August 31, 2006.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Disqualification for long-term care assistance for individuals with substantial home equity, 42 U.S.C. § 1396p(f).

Period of ineligibility waived under certain circumstances, § 67:46:05:10.

67:46:05:21. Nonbusiness income-producing property. Income-producing real or personal property is excluded as a resource if it meets the following requirements:

- (1) It is essential to self-support;
- (2) The individual's equity in the property is less than \$6,000; and
- (3) The individual's net annual return on the equity is at least six percent. The net annual return requirement must be met every year. However, if the property produces less because of circumstances beyond the individual's control, there must be a reasonable expectation that the property will again produce six percent income within 24 months following the last day of the tax year in which the income fell below six percent of the equity.

If equity in the property exceeds \$6,000 and the six percent net annual return is met, the equity in excess of \$6,000 must be combined with other countable resources and applied toward the resource limit.

If the net annual return is less than six percent of the equity value, the total equity is an includable resource.

If more than one nonbusiness income-producing property is involved, the total equity value of all nonbusiness income-producing property is considered within the \$6,000 limit and the return rate of six percent of equity applies to each property. Any property which does not meet the six percent return rate must be counted toward the resource limit together with any equity which exceeds the \$6,000 limit.

~~Property which produces rental income is considered under this section unless the net rental income is the individual's primary source of income. If it is the individual's primary source of income, the property is considered trade or business property and subject to the provisions of § 67:46:05:24.~~

Liquid resources are not considered property essential to self-support except when used as part of a trade or business.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; 13 SDR 8, effective August 3, 1986; 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:13, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Resource limit, § 67:46:05:30.

Exclusion of property of a trade or business essential to self-support, 20 C.F.R. § 416.1222.

Exclusion of nonbusiness property essential to self-support, 20 C.F.R. § 416.1224.

~~Property not considered essential to self-support, § 67:46:05:25.~~

67:46:05:23. Property representing governmental authority. Property essential to self-support which represents the authority granted by a government agency to engage in an income-producing activity, such as a special license or permit, is an excluded resource.

Source: 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:13.02, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

~~Cross Reference:~~ ~~Property not considered essential to self support, § 67:46:05:25.~~

67:46:05:24. Trade or business property. Real or personal property essential for self-support is excluded from resources if it is used for the individual's trade, business, or employment. If the property is normally used for these purposes but is not currently being used because of circumstances beyond the individual's control, the property is excluded from resources when there is a reasonable expectation that the use will resume within 12 months from its last use. If the property is not being used because the individual is disabled, the property is excluded from resources when there is a reasonable expectation that the use will resume within 24 months of its last use.

Source: 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:13.03, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

~~Cross Reference:~~ ~~Property not considered essential to self support, § 67:46:05:25.~~

67:46:05:28. Sale price paid in installments. If an individual is entitled to receive installment payments for property that was sold, the current balance of the unpaid principal ~~plus interest on the unpaid principal~~ is considered a resource for eligibility purposes.

Source: 8 SDR 170, effective June 21, 1982; transferred from § 67:16:20:15.01, effective August 23, 1992; 20 SDR 170, effective April 21, 1994.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:05:30. Resource limit. The resource limit, including both liquid and nonliquid resources, for long-term care assistance is \$2,000 for an individual and \$3,000 for an individual with a spouse if both spouses begin receiving long-term care services in the same month.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 133, effective April 27, 1983; 12 SDR 153, effective March 23, 1986; 13 SDR 145, effective April 12, 1987; 14 SDR 87, effective December 27, 1987; transferred from § 67:16:20:16, effective August 23, 1992; 30 SDR 193, effective June 13, 2004.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Limitation on resources, 20 C.F.R. § 416.1205.

67:46:05:31. Personal property excluded from resources. The following items shall be excluded when determining the value of resources:

(1) One automobile ~~not exceeding \$4,500 in current market value; however, when it is used for transportation to and from employment or medical care, is modified for operation by or for transportation of a handicapped person, or is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities, it shall be excluded regardless of the value~~ is excluded regardless of its value if it is used for necessary transportation for the individual or couple or a member of the individual's or couple's household; and

(2) Household goods, personal effects, and all items essential to everyday living, ~~and personal effects, including collections or items of unusual value when the equity value does not exceed \$2,000.~~

~~When values exceed the limits established in this section, the excess shall be counted as a resource.~~

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 13 SDR 8, effective August 3, 1986; transferred from § 67:16:20:17, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Exclusion of household goods and personal effects, 20 C.F.R. § 416.1216; Exclusion of the automobile, 20 C.F.R. § 416.1218.

67:46:05:35. Bank accounts. Deposits in a bank, savings and loan, or similar institution are considered liquid resources whether they are in the form of a checking or savings account or a certificate of deposit. Deposits held in joint accounts are considered available to the applicant or recipient when the applicant or recipient has control or can direct the disposition of funds from the accounts. Accounts held in joint ownership with other eligible individuals are divided equally among the eligible individuals. Deposits counted as income in the month the income was received are not a countable resource until the month following the month of receipt of the income.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:20:19, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:05:36. Savings bonds. Savings bonds are considered a liquid asset to the extent of their current value. Bonds held in co-ownership with another person are deemed available to the applicant or recipient when the applicant or recipient is the actual purchaser or has the authority to cause the bond to be cashed. Bonds purchased with money that was counted as income in the month the income was received are not a countable resource until the month following the month of receipt of the income.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; transferred from § 67:16:20:20, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:05:42. Resources considered. For purposes of determining eligibility for long-term care services or medical assistance, the department considers resources according to the following:

(1) For an unmarried individual, the department considers only the individual's resources;

(2) For a child born in a hospital and continuously hospitalized for 30 or more consecutive days from the date of birth, the department considers only the resources available to the child during this confinement. The parent's or stepparent's resources are not considered;

(3) For a child who does not meet the criteria contained in subdivision (2) of this section, the department considers the parent's or stepparent's resources available to the child in the calendar month of entry to the hospital, nursing facility, or intermediate care facility. After the calendar month of entry, the department considers only the resources of the parent or stepparent that are actually contributed to the child;

(4) For a married individual who entered a hospital, nursing facility, or intermediate care facility before September 30, 1989, and who since September 30, 1989, has not had 30 consecutive days out of the facility, the department considers only those resources owned by the applicant;

(5) For a married couple of which only one spouse enters a hospital, nursing facility, or intermediate care facility but is not expected to remain there for 30 consecutive days, the department considers the couple's combined resources available to each other. If the spouse's stay exceeds 29 days, the requirements of chapter 67:46:07 apply;

(6) For a married couple of which only one spouse participates in either an HCBS or HCBWS program but is not expected to receive services for 30 consecutive days, the

department considers the couple's combined resources available to each other. If the spouse's participation in HCBS or HCBWS exceeds 29 days, the requirements of chapter 67:46:07 apply;

(7) For a married couple living together during the calendar month that one spouse enters into assisted living or adult foster care, the department considers the couple's combined resources available to each other in the calendar month of entry. After the calendar month of entry, the department considers only those resources owned by the applicant. If the spouse is entering an assisted living facility and is receiving HCBS or HCBWS, the provisions of subdivision (5) apply; and

(8) For a married couple of which both spouses enter a ~~long-term care~~ nursing facility during the same calendar month, the department considers the couple's combined resources available to each other for the calendar month of entry. After the calendar month of entry, their resources are considered separately regardless of room occupancy.

Source: 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; 11 SDR 34, effective September 6, 1984; 12 SDR 153, effective March 23, 1986; 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:27, effective August 23, 1992; 20 SDR 92, effective December 21, 1993; 20 SDR 170, effective April 21, 1994; 30 SDR 193, effective June 13, 2004.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Resource limit, § 67:46:05:30.

Community spouses, ch 67:46:07.

Definition of HCBS, § 67:54:04:01.

Definition of HCBWS, § 67:44:03:01.

67:46:05:46. Increase in value of excluded burial funds. ~~After October 31, 1982, or the date of first Medicaid eligibility, whichever occurs later, an~~ An increase in the value of excluded burial funds due to interest which was left to accumulate and become a part of a separately identifiable burial fund is excluded from resources.

An increase in the value of an excluded burial space is excluded from resources.

Source: 9 SDR 133, effective April 27, 1983; 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:31, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:05:48. Pension funds. ~~Pension funds owned by an ineligible spouse or an ineligible parent or spouse of a parent may not be considered available to or counted as a resource of an eligible individual.~~

~~Pension funds are funds held in individual retirement accounts (IRAs) and in work-related pension plans, including plans for self-employed individuals such as Keogh plans~~
Repealed.

Source: 15 SDR 2, effective July 17, 1988; transferred from § 67:16:20:33, effective August 23, 1992.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:05:49. Retroactive SSI and retroactive retirement, survivors, and disability income payments. Retroactive SSI payments and retroactive retirement, survivors, and disability income payments are excluded from resources for ~~six~~ nine calendar months following the month of receipt ~~for individuals described in subdivisions 67:46:01:02(9), (18), (20), and (21).~~

Source: 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:34, effective August 23, 1992; 20 SDR 92, effective December 21, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:06:02. Definitions. Terms used in this chapter have the same meaning as those defined in § 67:46:04:02.

~~Household members include those relatives who meet the definition of dependent relative in § 67:46:05:01.~~

Source: 2 SDR 74, effective May 13, 1976; 5 SDR 109, effective July 1, 1979; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 133, effective April 27, 1983; transferred from § 67:16:21:01, effective August 23, 1992; 34 SDR 322, effective July 1, 2008.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:06:03. Income for determining long-term care assistance. For purposes of determining the amount of long-term care assistance, income is considered according to subdivisions 67:46:04:03(1) to (5), inclusive; §§ 67:46:04:04, ~~to 67:46:04:06, inclusive;~~ and §§ 67:46:04:08 to 67:46:04:10, inclusive.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; transferred from § 67:16:21:02, effective August 23, 1992; 20 SDR 170, effective April 21, 1994.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:06:04. Supplemental payment to long-term care facility. The department shall pay a participating ~~long-term-care~~ home and community based waiver provider or nursing facility for amounts not covered by an eligible individual's own income, insurance, a responsible third party or other state or federal assistance programs.

Source: 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; transferred from § 67:16:21:02.01, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Basis of payment for program benefits, § 67:46:06:10.

67:46:06:05. Deduction for personal needs. ~~A long-term care assistance~~ An applicant or recipient residing in a nursing or intermediate care facility is allowed a deduction of \$60 a month to cover personal needs. An applicant or recipient with earned income is allowed an additional deduction for personal needs up to a maximum of the first \$75 of gross earned income per month. An applicant or recipient who is paying court ordered child or spousal support is allowed an additional deduction for personal needs up to the amount of child or spousal support actually paid out, not to exceed the court ordered amount.

The provisions of this rule are applicable to applicants and recipients residing in a nursing facility or intermediate care facility.

Source: 2 SDR 74, effective May 13, 1976; 5 SDR 109, effective July 1, 1979; 7 SDR 76, effective February 11, 1981; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; 15 SDR 2, effective July 17, 1988; transferred from § 67:16:21:03, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 30 SDR 193, effective June 13, 2004; SL 2004, ch 186, § 1, effective July 1, 2004.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:06:07. Deduction for dependents -- No community spouse. If a recipient does not have a community spouse, as defined in SDCL 28-6-16, but the recipient's home is maintained for a dependent relative, a deduction from the recipient's income necessary to maintain a minimum income level for such a dependent is allowed based on family size. The deduction is determined by taking 100 percent of the ~~AFDC~~ need standard for independent living set in § 67:12:06:04.01.

The ~~AFDC~~ need standard for the family size, minus any other income the dependent relative may have, is then deducted from the recipient's income. When determining the amount of the dependent's income, §§ 67:46:04:01 to 67:46:04:09, inclusive, apply.

For purposes of this rule, a dependent relative is a son, daughter, granddaughter, grandson, stepson, stepdaughter, mother, father, stepmother, stepfather, half sister, half brother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, stepsister, first cousin, relatives of the preceding generation denoted by the prefixes of grand, great, or great-great; first cousin once removed; and great-great-great grandparent, and spouses of any of the relatives specified, even though the marriage is terminated by death or divorce, who is not currently receiving SSI.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 5 SDR 109, effective July 1, 1979; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; 13 SDR 8, effective August 3, 1986; 15 SDR 2, effective July 17, 1988; 16 SDR 203, effective May 27, 1990; transferred from § 67:16:21:07, effective August 23, 1992; 20 SDR 92, effective December 21, 1993; 21 SDR 162, effective March 23, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: In-kind shelter considered unearned income -- Dependent living arrangement, § 67:12:06:12; Institutionalized, aged, blind, or disabled individuals; determination of countable income, 42 C.F.R. § 435.733.

67:46:06:08. Supplemental security income. ~~Individuals remaining at home who are receiving or may be eligible for payment under the SSI program may not be considered dependent household members for purposes of § 67:46:06:07~~ Repealed.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; transferred from § 67:16:21:09, effective August 23, 1992.

~~General Authority:~~ ~~SDCL 28-6-1.~~

~~Law Implemented:~~ ~~SDCL 28-6-1.~~

67:46:06:11. Payment made to facility or representative payee. For an individual residing in a nursing or intermediate care facility, the department issues long-term care assistance payments directly to the facility. For an individual residing in assisted living and not receiving HCBS or HCBWS, or for an individual residing in adult foster care, the department issues assistance payments to the individual with the facility as the representative payee. For an individual receiving HCBS or HCBWS, the department issues payments directly to the provider of the services.

Source: 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; transferred from § 67:16:21:13, effective August 23, 1992; 20 SDR 92, effective December 21, 1993; 20 SDR 170, effective April 21, 1994.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Definition of HCBS, § 67:54:04:01.

Definition of HCBWS, § 67:44:03:01.

CHAPTER 67:46:07
COMMUNITY SPOUSES

Section

- 67:46:07:01 Definitions.
- 67:46:07:02 Assessment of community spouse's share of resources.
- 67:46:07:03 Determination of spousal share.
- 67:46:07:04 Application of existing resource rules to spousal share of resources.
- 67:46:07:05 Long-term care eligibility.
- 67:46:07:06 Initial month of eligibility.
- 67:46:07:07 Retroactive eligibility.
- 67:46:07:08 Consideration of resources at time of redetermination of eligibility or
reapplication for assistance.
- 67:46:07:09 Determination of amount of long-term care assistance for institutionalized
spouse.
- 67:46:07:10 Order of deductions from institutionalized spouse's income.
- 67:46:07:11 Deduction for maintenance of community spouse.
- 67:46:07:12 Computation of community spouse's maintenance allowance and excess shelter
allowance.
- 67:46:07:13 Deduction for maintenance of dependents living with community spouse.
- 67:46:07:14 Determination of income of community spouse and dependents.
- 67:46:07:15 Loss of community spouse status.
- 67:46:07:16 ~~Medical eligibility for community spouse or dependent~~ Repealed.
- 67:46:07:17 Fair hearings.

67:46:07:02. Assessment of community spouse's share of resources. The department shall assess a couple's combined countable resources to determine the community spouse's share if all of the following occur:

(1) An application for ~~long-term care~~ assistance with nursing facility or home and community based waiver services has been made or an institutionalized spouse, the community spouse, or the couple's authorized representative has requested the assessment;

(2) The institutionalized spouse was admitted to a hospital, nursing ~~home~~ facility, or intermediate care facility or began receiving home and community based waived services after September 29, 1989, and is expected to remain in the facility or continue receiving home and community-based waived services for at least 30 consecutive days; and

(3) The institutionalized spouse has a community spouse.

The department must complete the assessment within 45 days of the request unless delay is due to nonreceipt of documentation or verification from the requesting party or a third party. The department may not use the time standard as a waiting period or reason for not completing the assessment if documentation has been provided.

The department shall reassess the couple's resources if the institutionalized spouse has a break in institutional care of at least 30 consecutive days and if subdivisions (1), (2), and (3) of this section occur.

The department shall apply the provisions of chapter 67:46:05 if the spouse is entering an assisted living facility and is not receiving HCBS or HCBWS or is entering an adult foster care facility.

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:02, effective August 23, 1992; 30 SDR 193, effective June 13, 2004.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

Cross-References: Definition of HCBS, § 67:54:04:01; Definition of HCBWS, § 67:44:03:01.

67:46:07:05. Long-term care eligibility. Individuals wishing to apply for long-term care assistance must apply as provided in chapter 67:46:02.

Eligibility other than financial shall be determined according to ~~chapter~~ chapters 67:46:01 and 67:46:03.

Financial eligibility shall be determined according to chapters 67:46:04, ~~with the exception of § 67:46:04:10, and 67:46:05, with the exception of § 67:46:05:42.~~

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:05, effective August 23, 1992.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

67:46:07:08. Consideration of resources at time of redetermination of eligibility or reapplication for assistance. At the time of redetermination of eligibility or reapplication for long-term care assistance during a continuous period of institutionalization, resources held by the institutionalized spouse shall be considered for eligibility according to chapter 67:46:05 ~~with the exception of § 67:46:05:42.~~

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:08, effective August 23, 1992.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

Cross-Reference: Annual redetermination of eligibility, § 67:46:02:08.

67:46:07:09. Determination of amount of long-term care assistance for institutionalized spouse. Sections 67:46:07:10 to 67:46:07:13, inclusive, and chapter 67:46:06, except for §§ 67:46:06:02, 67:46:06:03, and 67:46:06:07, ~~and 67:46:06:08~~, shall be used to determine the amount of long-term care assistance the institutionalized spouse is eligible to receive from the department.

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:09, effective August 23, 1992.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

67:46:07:10. Order of deductions from institutionalized spouse's income. Deductions from the income of the institutionalized spouse shall be allowed in the following order:

- (1) The personal needs allowance specified in § 67:46:06:05;
- (2) The spousal maintenance and excess shelter allowance specified in § 67:46:07:12;
- (3) The maintenance allowance for dependents living with the community spouse as specified in § 67:46:07:13; ~~and~~
- (4) The deduction for premiums paid on health insurance policies according to § 67:46:07:04; and
- (5) Unpaid medical expenses incurred during a period which is no more than three months prior to the month of the most recent application for long term care services. The expenses must have been for necessary medical or remedial care services recognized under state law and prescribed by a physician that are not covered by Medicaid or any third party.

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:10, effective August 23, 1992.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

67:46:07:12. Computation of community spouse's maintenance allowance and excess shelter allowance. The community spouse's monthly minimum maintenance allowance is 150 percent of the federal poverty income level established in § 67:11:01:03 for two persons divided by 12.

The excess shelter allowance is determined by subtracting 30 percent of the minimum maintenance allowance from the community spouse's shelter costs. Shelter costs include rent or mortgage costs, trailer parking space fees, taxes and insurance on the premises, and condominium or cooperative maintenance charges for the couple's principal residence. Shelter costs also include the ~~standard food stamp utility allowance for heating, cooling, or electricity if these services are not included in the rent, mortgage, or maintenance payment. If the costs of heating, cooling, and electricity are included in the rent, the standard food stamp utility allowance may not be made for charges for excess utility use~~ applicable supplemental nutrition assistance program utility allowance pursuant to §§67:13:01:02, 67:13:01:05 or 67:13:01:06.

Rent, mortgage, taxes, insurance, and condominium and cooperative maintenance charges paid less frequently than monthly are prorated for the period of intent.

The combined spousal allowances may not exceed \$2,931 unless a greater allowance is provided for under a court order of support or if through the fair hearing process it is determined that a greater amount of need exists because of circumstances resulting in financial duress.

These deductions are not permissible if the institutionalized spouse does not make the income available to the community spouse.

Source: 16 SDR 203, effective May 27, 1990 and July 1, 1990; transferred from § 67:16:32:12, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 20 SDR 92, effective December 21, 1993; 20 SDR 170, effective April 21, 1994; 21 SDR 162, effective March 23, 1995; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2007; 35 SDR 234, effective April 1, 2009; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

~~Cross-Reference:~~ ~~Standard utility allowance, § 67:13:01:02.~~

67:46:07:16. Medical eligibility for community spouse or dependent. ~~If the community spouse or a dependent of the institutionalized spouse applies for medical assistance, that person's eligibility shall be determined according to this article with the exception of this chapter~~ Repealed.

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:16, effective August 23, 1992.

General Authority: ~~SDCL 28-6-1, 28-6-18.~~

Law Implemented: ~~SDCL 28-6-1, 28-6-18.~~

CHAPTER 67:46:08

LONG-TERM CARE NOTICE REQUIREMENTS

Section

- 67:46:08:01 Required timely and adequate notice.
- 67:46:08:02 Adequate notice to applicants.
- 67:46:08:03 Suspension of timely notice and the application of adequate notice.
- 67:46:08:04 ~~Right to a conference~~ Repealed.
- 67:46:08:05 Notice of right to request waiver of period of ineligibility -- Assets transferred at less than fair market value -- Ineligibility due to home equity limit.

67:46:08:03. Suspension of timely notice and the application of adequate notice.

The department may dispense with timely notice as provided in § 67:46:08:01 and mail adequate notice to a recipient of long-term care assistance no later than the effective date of the intended change in any of the following situations:

- (1) The department has factual information confirming the death of a recipient;
- (2) The department receives a clear written statement signed by a recipient that the recipient no longer wishes assistance or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that the recipient understands that this is the consequence of supplying such information;
- (3) The change requires an adjustment to the budget and has no impact on the recipient's eligibility for benefits;
- (4) The recipient's whereabouts are unknown and mail from the department directed to the recipient has been returned by the post office or facility indicating no known forwarding address;
- (5) The recipient has been accepted for assistance in a nursing ~~home~~ facility in a different state and that fact has been established by the department;
- (6) A decision is made by the medical review team indicating a change in the level of care required by the recipient; and
- (7) The recipient has been admitted to an institution where the recipient is ineligible for further services; and
- ~~(8) SSI eligibility terminates.~~

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:22:02, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:46:09
DISABLED CHILDREN

Section

- 67:46:09:01 Definitions.
- 67:46:09:02 ~~Application required~~ ~~Time for determining eligibility~~ ~~Notice~~ Repealed.
- 67:46:09:03 ~~Prerequisites for eligibility~~ Repealed.
- 67:46:09:04 Eligibility requirements.
- 67:46:09:05 Physician's orders required.
- 67:46:09:06 Team to determine level of care.
- 67:46:09:07 Level of care -- Acute care hospital.
- 67:46:09:08 Level of care -- Specialized hospital.
- 67:46:09:09 Level of care -- Nursing facility.
- 67:46:09:10 Level of care -- ICF-MR.
- 67:46:09:11 Determination of intellectual disability.
- 67:46:09:12 Cost not to exceed cost of medical institutional care.
- 67:46:09:13 Reviews for continued eligibility.
- 67:46:09:14 Notice when case closed.

67:46:09:01. Definitions. Terms used in this chapter mean:

(1) "Active treatment," a continuous program of specialized training, treatment, health services, and related services provided to help an individual achieve the highest functioning level possible, but not services required to maintain generally independent individuals who are able to function with little supervision or in the absence of the continuous active treatment program;

(2) "Activities of daily living" or "ADL," physical functions which allow a person to live independently, including bathing, dressing, eating, toileting, and mobility according to an age appropriate assessment;

(3) "Developmental milestones," significant behavior that marks and delineates normal sequences of human development;

(4) "Disabled child program," a program for certain medically fragile and severely disabled children whose medical care needs would otherwise require the level of care provided in a medical institution;

(5) "ICF-IID," an intermediate care facility for individuals with intellectual disabilities as defined in § 67:54:03:01;

(6) "Medical institution," a hospital as defined under § 67:16:03:01; a facility licensed by the department of health under SDCL 34-12 as a specialized hospital with services limited to rehabilitation; a nursing facility as defined in § 67:45:01:01; or an intermediate care facility for individuals with intellectual disabilities;

(7) "Professional nursing services," nursing services which are provided by a professional nurse under the provisions of SDCL chapter 36-9 and §§ 20:48:04:01, 20:48:04:01.07, 20:48:04:01.11, 20:48:04:01.12; and

(8) "Team," a group which determines eligibility for the disabled child program under the provisions of this chapter and consists of ~~at least~~ a nurse and may include a ~~social worker~~ representative of the department and may include a physician.

Source: 19 SDR 26, effective August 23, 1992; 40 SDR 122, effective January 8, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:09:02. Application required -- Time for determining eligibility -- Notice. ~~A parent, legal guardian, or authorized representative must complete, date, and sign an application for assistance pursuant to this chapter. An application lacking the information needed to determine eligibility or any of the required signatures is cause for a denial of eligibility.~~

~~After the department receives the completed application, the department shall request the medical documentation necessary to determine medical eligibility from the child's physician.~~

~~Within 90 days after the date of the application, the department shall determine eligibility and shall send written notice of the eligibility determination to the individual who signed the application. This deadline applies except in unusual circumstances, including a failure or delay on the part of an examining physician to provide necessary information, an inability to obtain a supplemental security disability determination, or an emergency beyond the department's control. The department shall fully document in the case record the cause of any delay. The department's deadline for acting on applications or continuing eligibility may not be used as a waiting period before granting or denying benefits Repealed.~~

Source: 19 SDR 26, effective August 23, 1992.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:09:03. Prerequisites for eligibility. ~~A parent, legal guardian, or authorized representative must apply for supplemental security income (SSI) on behalf of the child and the social security administration must issue its notice of eligibility determination before the department determines a child's eligibility for assistance pursuant to this chapter.~~

~~The social security administration's disability determination is binding on eligibility or continued eligibility for services. If supplemental security income is denied because the social security administration determined that the child was not disabled, the child is not eligible for assistance.~~

~~If supplemental security income is denied because of parental income or resources, an application may be made under this chapter.~~

~~An individual must take advantage of all income and resources to which the individual is entitled, including social security, SSI, income and resources available under the terms of a trust, veterans' benefits, insurance policies, and contractual agreements. Failure or refusal by the individual to take the necessary action to take advantage of the income and resources makes the individual ineligible for benefits Repealed.~~

Source: 19 SDR 26, effective August 23, 1992.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:09:04. Eligibility requirements. To be eligible, all of the following requirements must be met:

- (1) ~~The child is not over 18 years old;~~ The child is under the age of 19;
- (2) A physician designated by the department has determined that the child is disabled according to 20 C.F.R. §§ 416.924 to 416.924e b, inclusive, ~~(April 1, 1991)~~ or determined disabled by the social security administration within the last year. The social security administration's disability determination is binding on eligibility or continued eligibility for services. If supplemental security income or social security disability is denied because the social security administration determined that the child was not disabled, the child is not eligible for assistance;
- (3) The child would be eligible for Medicaid if the child was in a medical institution;
- (4) The child requires one of the levels of care listed in § 67:46:09:06;
- (5) The estimated cost of monthly health care outside the medical institution does not exceed the medical institution's cost of care established in ~~§ 67:16:09:12~~ chapter 67:16:04; and
- (6) The child meets the income and resource requirements contained in chapters 67:46:04 and 67:46:05.

Source: 19 SDR 26, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross Reference: How we determine disability for children, 20 C.F.R. § 416.924 (July 15, 2011); Considerations in determining disability for children, 20 C.F.R. § 416.924a

(September 11, 2000); Age as a factor of evaluation in the sequential evaluation process for children 20 C.F.R. § 416.924b (October 19, 2007).

67:46:09:09. Level of care -- Nursing facility. A child may qualify for a nursing facility level of care when all of the following conditions are met:

(1) The child requires continuing ~~direct care~~ professional nursing services which have been ordered by a physician and can only be provided by or under the supervision of a professional nurse as defined in chapter 20:48:04.01. These services include daily management, direct observation, monitoring, or performance of complex nursing procedures. Continuing care is repeated application of the procedures or services at least once each 24 hours, frequent monitoring, and documentation of the child's condition and response to the procedures or services;

(2) The child requires the assistance of another person for the performance of at least three of the five activities of daily living according to an age appropriate assessment. The ADL dependency requires the assistance and presence of another person during the entire activity; and

(3) The child requires skilled therapeutic services including physical therapy, occupational therapy, and speech/language therapy in any combination scheduled regularly, but not less than once a week unless limited by the child's medical condition or age.

Source: 19 SDR 26, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:09:10. Level of care -- ICF-IID. The team may assign an individual to an ICF-IID level of care when all of the following conditions are met:

- (1) The child requires a continuous active treatment program;
- (2) The child requires direct assistance from professionals for special rehabilitative or developmental intervention for conditions which significantly interfere with mental age-appropriate activities;
- (3) The child requires the assistance of another person for the performance of at least three of the five activities of daily living according to an age appropriate assessment. The ADL dependency requires the assistance and presence of another person during the entire activity;
- (4) The child requires continuing ~~direct care~~ professional nursing services which have been ordered by a physician and can only be provided by or under the supervision of a professional nurse as defined in chapter 20:48:04.01. The services include daily management, direct observation, monitoring, or performance of complex nursing procedures. Continuing care is repeated application of the procedures or services at least once each 24 hours, frequent monitoring, and documentation of the child's condition and response to the procedures or services; and
- (5) A clinical psychologist has determined that the child has an intellectual disability according to the provisions of § 67:46:09:11, or a physician or a psychologist has determined that the child is developmentally disabled according to § ~~67:16:27:05~~ 67:54:04:05.

Source: 19 SDR 26, effective August 23, 1992; 40 SDR 122, effective January 8, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:10:01. Definitions. Terms used in this chapter mean:

(1) "Chronic renal failure," a phase of renal functional impairment which can no longer be favorably influenced by conservative management and which requires long-term, continuing dialysis or transplantation to maintain life and health;

(2) "Income," any money or in-kind payments before deductions as established in § 67:46:10:05;

~~(3) "Legally responsible persons," those persons responsible for the support of the applicant or recipient, including the parents of a minor child;~~

~~(4)~~ (3) "Program," the South Dakota chronic renal disease program administered by the Department of Social Services;

~~(5)~~ (4) "Resident," a person residing in South Dakota with an intent to remain or absent from the state for medical purposes but with an intent to return;

~~(6)~~ (5) "Resource," real or personal property and income owned by the applicant or persons legally responsible for the applicant; and

~~(7)~~ (6) "Third party payer," any individual; firm; partnership; corporation; company; association; governmental agency, including Medicaid or veterans administration; local fund drive contributions; or any other entity responsible for or otherwise assuming an obligation to provide the payment of all or part of the cost of the medical care and treatment of a person suffering from chronic renal failure.

Source: 2 SDR 88, effective July 1, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 7 SDR 121, effective July 2, 1981; transferred from § 67:16:23:01, effective August 23, 1992; 21 SDR 86, effective December 29, 1994; 22 SDR 2, effective July 17, 1995.

General Authority: SDCL 28-6A-12.

Law Implemented: SDCL 28-6A-2.

CHAPTER 67:46:11

QUALIFIED MEDICARE BENEFICIARIES (QMB)

Section

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67:46:11:01. Definitions. Terms defined in § 67:16:01:01 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

- (1) "BIA," the bureau of Indian affairs;
- (2) "Coinsurance," that portion of the medical costs allowable but not payable by Medicare and for which the individual is responsible;
- (3) "Deductible," the initial amount of allowable Medicare costs paid by the individual before Medicare begins paying;
- (4) "Medicare," the federal health insurance program available through the social security administration for certain disabled individuals and for individuals 65 years of age or older;
- (5) "OCSE," the office of child support enforcement within the department of social services;
- (6) "Part A," insurance available through the Medicare program to help pay for medically necessary hospice or home health care or care in a hospital or skilled nursing facility;
- (7) "Part B," insurance available through the Medicare program to help pay for medically necessary physician services, outpatient hospital services, and medical supplies;
- (8) "Qualifying Individual" or "QI," a person who meets the requirements of this chapter and who is not otherwise eligible for Medicaid benefits and for whom the state pays the Part B Medicare premium;
- ~~(8)~~ (9) "Qualified Medicare beneficiary" or "QMB," a person who meets the requirements of this chapter and for whom the state pays the Medicare Part A and Part B premiums, deductibles, and coinsurance and copayments;
- ~~(9)~~ (10) "SCORE," the service corps of retired executives;

~~(10)~~ (11) "Special low-income Medicare beneficiary" or "SLMB," a person who meets the requirements of this chapter and for whom the state pays the Part B Medicare premium; and

~~(11)~~ (12) "VISTA," the volunteers in service to America.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:01, effective August 23, 1992; 19 SDR 141, effective March 25, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:11:02. Long-term care requirements applicable to QL, QMB and SLMB. All provisions of chapters 67:46:02 to 67:46:05, inclusive, and 67:46:08 apply to QL, QMB and SLMB applicants and recipients unless otherwise specified in this chapter.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:02, effective August 23, 1992; 19 SDR 141, effective March 25, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:11:03. Income eligibility. After the \$20 disregard, income for a QMB individual may not exceed 100 percent of the federal poverty level established in § 67:11:01:03. If the individual's countable income is 100 percent of the federal poverty level or less and the individual is married and living with a spouse, the income of the spouse must be considered. If their combined countable income exceeds 100 percent of the federal poverty level for two individuals, the individual is ineligible.

After the \$20 disregard, the countable income for a SLMB individual must exceed 100 percent of the federal poverty level and be less than 120 percent of the federal poverty level. If the individual's countable income is less than 120 percent of the federal poverty level and the individual is married and living with a spouse, the income of the spouse must be considered. If their combined countable income is equal to or greater than 120 percent of the federal poverty level for two individuals, the individual is ineligible.

After the \$20 disregard, the countable income for a QI individual must be at least 120 percent of the federal poverty level and be less than 135 percent of the federal poverty level. If the individual's countable income is less than 135 percent of the federal poverty level and the individual is married and living with a spouse, the income of the spouse must be considered. If their combined countable income is equal to or greater than 135 percent of the federal poverty level for two individuals, the individual is ineligible.

Source: 15 SDR 171, effective May 15, 1989; 16 SDR 203, effective May 27, 1990; transferred from § 67:16:30:03, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 20 SDR 92, effective December 21, 1993; 21 SDR 162, effective March 23, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Income disregard, § 67:46:11:09.

67:46:11:04. Deduction from income for dependent child. ~~The department allows a deduction from the ineligible spouse's income for a dependent child living with the couple. The child may not be receiving SSI, AFDC, or other public maintenance payments. The amount of the deduction is \$229 minus the child's own income and is applied before calculating the couple's income as provided in § 67:46:11:03.~~

~~If the dependent child is a student and has earned income, \$400 a month up to a maximum of \$1,620 a year is excluded from the earned income before computing the amount of the child's income to be deducted from the allowable deduction of \$229.~~

~~For purposes of this rule, a dependent child is the natural or adopted child of an eligible individual or the natural or adopted child of the ineligible spouse. The child must be either under age 21 and a student who is attending school or under age 18 Repealed.~~

Source: 15 SDR 171, effective May 15, 1989; 16 SDR 203, effective May 27, 1990; transferred from § 67:16:30:04, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 21 SDR 162, effective March 23, 1995.

General Authority: ~~SDCL 28-6-1.~~

Law Implemented: ~~SDCL 28-6-1.~~

67:46:11:06. Items not considered income when determining QL, QMB or SLMB eligibility. In addition to those items contained in § 67:46:04:03, the following items are not considered income when determining QL, QMB or SLMB eligibility:

(1) Assistance based on need provided by a local government or nongovernmental agency, such as Catholic Charities, county assistance, or assistance from the Salvation Army;

(2) Replacement of resources in cash or in kind because of loss, damage, or theft of property;

(3) Home energy assistance;

(4) Home produce for personal use;

(5) Foster care payments made to a foster care provider;

(6) Grants or loans to undergraduate students for educational purposes which are insured by the United States secretary of education;

(7) Housing assistance from housing and urban development or farmer's home administration;

(8) Credit life or credit disability insurance payments on loans, installment purchases, and similar items in the event of death or disability;

(9) Money borrowed;

(10) Money received as repayment on the principal of a loan;

(11) Reimbursements for expenses of obtaining income such as per diem payments and mileage;

(12) United States department of agriculture food commodities, the value of coupon allotments from government agencies and, for an individual age 60 or over, the value of meals received at a center or the value of meals delivered to the individual's home;

(13) Any benefits received under the provisions of the Older Americans Act of 1965, except wages or salary;

(14) Payments to volunteers under the Domestic Volunteer Service Act of 1973, such as from SCORE, VISTA, or the foster grandparent program; and

(15) Indian judgment funds distributed on a per capita basis.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:06, effective August 23, 1992; 19 SDR 141, effective March 25, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:11:09. Income disregard. The department shall disregard \$20 a month from the applicant's or recipient's unearned income unless the income is from a source based on need, such as certain veterans' benefits, ~~AFDC~~ TANF, or BIA general assistance. If unearned income is less than \$20, the difference shall be deducted from the applicant's or recipient's gross earned income before applying the earned income disregard provided in § 67:46:11:06. If the individual is living with the individual's spouse, the \$20 deduction applies to the couple's combined income.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:09, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:11:10. Resource limit. The maximum resource limit for a QI, QMB or SLMB is \$7,160 for a single individual and \$10,750 for an individual with a spouse effective January 1, 2014. The resource limit is adjusted on January 1 of each year, based upon the change in the annual consumer price index since September of the previous year. For a married couple living together, their combined resources are considered available to each other and shared equally.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:10, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:11:12. Date of eligibility. Benefits for individuals eligible for QMB begin with the month after the month in which the individual is determined eligible. Eligibility starting dates outlined in § 67:46:01:03 do not apply.

Benefits for individuals eligible for SLMB or QI begin with the first day of the month of application. Eligibility may begin as early as the first day of the third month prior to the month of application if all eligibility criteria are met. ~~Eligibility may not begin prior to January 1993.~~

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:12, effective August 23, 1992; 19 SDR 141, effective March 25, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:11:13. Payment limits. If an individual is eligible for QMB, payment is limited to Medicare premiums, deductibles, ~~and~~ coinsurance, and copayment for Part A and Part B of Medicare.

If an individual is eligible for SLMB, payment is limited to the Part B Medicare premium.

If an individual is eligible for QL, payment is limited to the Part B Medicare premium.
The department may discontinue services provided under the provisions of this chapter if the department exhausts its financial resources for providing the services.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:13, effective August 23, 1992; 19 SDR 141, effective March 25, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:12:02. Medicaid eligibility -- Parent/caretaker relative. If a dependent child is living with a parent/caretaker relative, the parent/caretaker relative may be eligible for Medicaid if the following criteria is met:

- (1) They meet the general eligibility requirements of chapter 67:46:01;
- ~~(2) They meet the residency requirements of § 67:46:03:04 through 67:46:03:15; and~~
- ~~(3)~~ (2) They meet the requirements contained in this chapter.

Source: 24 SDR 24, effective August 31, 1997; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:12:10. Medicaid eligibility -- Pregnant woman. A pregnant woman is eligible for Medicaid if the following criteria is met:

- (1) She meets the general eligibility requirements of chapter 67:46:01;
- ~~(2) She meets the residency requirements of §§ 67:46:03:04 through 67:46:03:15;~~
- ~~(3)~~ (2) She meets the requirements contained in this chapter.

Source: 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:12:12. Medicaid eligibility -- Children. A child is eligible for Medicaid if the following criteria is met:

(1) With the exception of § 67:46:01:14, the child meets the general eligibility requirements of chapter 67:46:01;

~~(2) The child meets the residency requirements of §§ 67:46:03:04 through 67:46:03:15;~~

~~(3)~~ (2) The child meets the requirements contained in this chapter.

Source: 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:12:14. Medicaid eligibility -- Other reasonable classifications of children. A

child under age 21 is eligible for Medicaid assistance if the child:

- (1) Is in an adoption that is subsidized in full or part by a public agency;
- (2) Resides in a nursing or intermediate care facility;
- (3) Is under the custody of the department;
- (4) Is in foster care and the department is assuming full or partial financial responsibility;
- (5) Is under the jurisdiction of the Department of Corrections and is not an inmate of a public institution under the provisions of 42 CFR 435.1008;
- (6) Is adjudicated under the guardianship of the South Dakota Human Services Center and is receiving inpatient psychiatric treatment for drug or alcohol dependency; or
- (7) Is adjudicated under the guardianship of the South Dakota Human Services Center and is receiving inpatient psychiatric treatment.

The child must also meet the requirements in Chapter 67:46:01, ~~residency requirements~~ in §§ 67:46:03:04 through 67:46:03:15, and have income within limits specified in § 67:46:12:15.

Source: 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:14:01. Definitions. Terms used in this chapter mean;

- (1) "Caretaker," the adult who lives with and provides care and control of a child eligible for services under this chapter. The caretaker may include the child's parent or parents;
- (2) "Child," an individual who has not attained the age of 19;
- (3) "~~CHIP-MN~~ NM," the nonmedicaid children's health insurance program for children eligible under the provisions of this chapter;
- (4) "Group health plan," a plan of, or contributed to by, an employer, including a self-employed person, or employee organization to provide health care, directly or otherwise, to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. A group health plan includes self-insured plans and plans of incorporated or unincorporated organizations that are organized and operated for educational, religious, charitable, or other purposes and that hold funds exclusively for its members and use those funds to meet the health care needs of its members;
- (5) "Health insurance," benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer; and
- (6) "Health insurance issuer," an insurance company, insurance service, or insurance organization, including a health maintenance organization, that is required to be licensed to engage in the business of insurance in South Dakota. A health insurance issuer does not include a group health plan;
- (7) "Family size/Household," an individual's family size/household has the same meaning as determined under the provisions of 42 C.F.R. § 435.603.

Source: 26 SDR 168, effective July 1, 2000; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R.
§ 435.603 (July 15, 2013).

67:10:05:17. Eligibility and amount of assistance payment. If an assistance unit is required to report according to § 67:10:05:14, the department shall determine eligibility and the amount of assistance based on the most recently reported information if a change in income or circumstances is obtained from one of the following:

- (1) The application, recertification, or report form completed by the assistance unit;
- (2) The Systematic Alien Verification for Entitlements program available through the United States Citizenship and Immigration Services;
- (3) The State Data Exchange or Beneficiary Data Exchange computer interface system match with the Social Security Administration;
- (4) The unemployment insurance benefits computer interface system match with the Department of Labor and Regulation;
- (5) A hearing decision, including a decision establishing an intentional program violation;
- (6) A department employment specialist, a Department of Labor and Regulation employment specialist, or a Department of Labor and Regulation supplemental nutrition assistance employment and training representative;
- (7) Report of refusal to cooperate as specified in §§ 67:10:01:25 and 67:10:01:26;
- (8) The assistance unit reports their income exceeds the need standard in chapter 67:10:05 based on household size and living arrangements;
- (9) The assistance unit requests their case closed;
- (10) A member of the assistance unit applies for TANF in another state on their own behalf or with another assistance unit in the state;

(11) The assistance unit reports moving out-of-state or the postal service returns mail indicating an assistance unit member has moved out-of-state;

(12) An action to budget a future known change;

(13) An action to correct information that was incorrectly reported or budgeted;

(14) The assistance unit, Division of Child Protection Services, Division of Child Support, or the appropriate tribal child protection office reports a change in individuals residing in the household;

(15) Public Assistance Reporting Information System (PARIS); ~~or~~

(16) Information is received indicating an individual in the household is residing in an institution for a period longer than 90 days; or

(17) Information is received that an individual in the household received more than \$2000 in gambling or lottery winnings.

If a change other than those specified above is reported to the department and verification is provided, the department may change the amount of assistance based on the reported and verified changes only if the calculation results in an increase in the amount of the assistance payment.

Source: 36 SDR 103, effective December 21, 2009; 36 SDR 215, effective July 1, 2010; 39 SDR 220, effective June 27, 2013.

General Authority: SDCL 28-7A-3(1)(3)(4).

Law Implemented: SDCL 28-7A-3(1)(3)(4).

67:13:03:21. Eligibility and allotment determination. The department shall determine supplemental nutrition assistance eligibility and the amount of assistance based on the most recently reported information if the change in income or circumstances is obtained from one of the following:

- (1) The application, recertification, or report form completed by the household;
- (2) The Systematic Alien Verification for Entitlements program available through the United States Citizenship and Immigration Services;
- (3) The State Data Exchange or Beneficiary Data Exchange computer interface system match with the Social Security Administration;
- (4) The unemployment insurance benefits computer interface system match with the Department of Labor and Regulation;
- (5) A hearing decision, including a decision establishing an intentional program violation;
- (6) A department employment specialist, a Department of Labor and Regulation employment specialist, or a Department of Labor and Regulation supplemental nutrition assistance employment and training representative;
- (7) Report of refusal to cooperate as specified in § 67:13:03:22;
- (8) The household reports their gross income exceeds the maximum gross income as identified in 7 C.F.R. § 273.10(e)(4) based on household size and living arrangements;
- (9) The household requests their case closed;
- (10) A member of the household applies for supplemental nutrition assistance in another state on their own behalf or with another assistance unit in the state;

(11) The household reports moving out-of-state or the postal service returns mail indicating a household member has moved out-of-state;

(12) An action to budget a future known change;

(13) An action to correct information that was incorrectly reported;

(14) An eligible ABAWD working at least 20 hours a week who discontinues that employment or whose work hours are reduced to less than 20 hours a week;

(15) An eligible ABAWD who has received three months of eligibility in the allowed 36 month period and is no longer eligible;

(16) Postponed verification was received due to expedited service;

(17) The household, Division of Child Protection Services, Division of Child Support, or the appropriate tribal child protection office reports a change in individuals residing in the household;

(18) The household's TANF grant has changed or stopped;

(19) Public Assistance Reporting Information System (PARIS); ~~or~~

(20) Information is received indicating an individual in the household is residing in an institution for a period longer than 30 days; or

(21) Information is received that an individual in the household received more than \$2000 in gambling or lottery winnings.

If a change other than those specified above is reported to the department and verification is provided, the department may change the amount of assistance based on the reported and verified changes only if the calculation results in an increase in the allotment amount.

Source: 36 SDR 103, effective December 21, 2009; 36 SDR 215, effective July 1, 2010;
39 SDR 220, effective June 27, 2013.

General Authority: SDCL 28-7A-3(1)(3).

Law Implemented: SDCL 28-7A-3(1)(3).